

Text in Red was finalized at [82 FR 27552](#) and is effective on July 1, 2018.

Title 12: Banks and Banking

Part 229 – Availability of Funds and Collection of Checks (Regulation CC)

§ 229.1 Authority and purpose; organization

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(b) * * *

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks. These rules cover the direct return of checks, the manner in which the paying bank and returning banks must return checks to the depository bank, notification of nonpayment by the paying bank, indorsement and presentment of checks and electronic checks, same-day settlement for certain checks, the liability of banks for failure to comply with subpart C of this part, and other matters.

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(5) Appendix A of this part contains a routing number guide to next day-availability checks. The guide lists the routing numbers of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, and U.S. Treasury checks and Postal money orders that are subject to next-day availability.

(6) Appendix B of this part is reserved.

(7) Appendix C of this part contains model funds-availability policy disclosures, clauses, and notices and a model disclosure and notices related to substitute-check policies.

(8) Appendix D of this part is reserved.

(9) Appendix E of this part contains Board interpretations, which are labeled “Commentary,” of the provisions of this part. The Commentary provides background material to explain the Board’s intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to work. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

(10) Appendix F of this part contains the Board’s determinations of the EFA Act and Regulation CC’s preemption of state laws that were in effect on September 1, 1989.



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§ 229.2 Definitions

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(dd) *Routing number* means—

(1) The number printed on the face of a check in fractional form or in nine-digit form;
~~or~~

(2) The number in a bank's indorsement in fractional or nine-digit form; ~~or-~~

(3) For purposes of subpart C and subpart D, the bank-identification number contained in an electronic check or electronic returned check

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(uu) *Indemnifying bank* means ~~- a bank that provides an indemnity under §229.53 with respect to a substitute check.~~

(1) For the purposes of § 229.34, a bank that provides an indemnity under §229.34 with respect to remote deposit capture or an electronically-created item, or

(2) For the purposes of § 229.53, a bank that provides an indemnity under § 229.53 with respect to a substitute check.

(vv) *Magnetic ink character recognition line* and *MICR line* mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are (unless the Board by rule or order determines that different standards apply)

(1) printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100-140 (hereinafter ANS X9.100-140) for a substitute check (unless the Board by rule or order determines that different standards apply).

(2) For purposes of subpart C and subpart D, contained in a record specified for MICR line data in an electronic check or electronic returned check in accordance with American National Standard Specifications for Electronic Exchange of Check Image Data— Domestic, X9.100-187 (hereinafter ANS X9.100—187).

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(bbb) Sufficient Copy and sufficient copy.

(1) A copy of the original check means –

(i) Any paper reproduction of an original check, including a paper printout of an electronic image of the check, a photocopy of the original check, or a substitute check; or

(ii) Any electronic reproduction of a check that a recipient has agreed to receive from the sender instead of a paper reproduction.

~~(12)~~ A *sufficient copy* is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

~~(2) A copy of an original check means any paper reproduction of an original check, including a paper printout of an electronic image of the original check, a photocopy of the original check, or a substitute check.~~

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(ggg) Electronic check and electronic returned check mean an electronic image of, and electronic information derived from, a paper check or paper returned check, respectively, that—

(1) Is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and

(2) Conforms with ANS X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

(hhh) Electronically-created item means an electronic image that has all the attributes of an electronic check or electronic returned check but was created electronically and not derived from a paper check.

§229.30 Electronic checks and electronic information

(a) Checks under this subpart. Electronic checks and electronic returned checks are subject to this subpart as if they were checks or returned checks, except where “paper check” or “paper returned check” is specified. For the purposes of this subpart, the term “check” or “returned check” as used in Subpart A includes “electronic check” or “electronic returned check,” except where “paper check” or “paper returned check” is specified.



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(b) Writings. If a bank is required to provide information in writing under this subpart, the bank may satisfy that requirement by providing the information electronically if the receiving bank agrees to receive that information electronically.

§229.31 Paying bank's responsibility for return of checks, and notices of nonpayment.

~~(a) Return of checks.~~ If a paying bank determines not to pay a check, it shall return the check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.

(1) Subject to the requirement of expeditious return under paragraph (b) of this section, a paying bank may send a returned check to the depository bank, to any other bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section. ~~Two-day/four-day test.~~ A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depository bank not later than 4:00 p.m. (local time of the depository bank) of—

~~(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depository bank; or~~

~~(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depository bank.~~

~~If the last business day on which the paying bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the paying bank meets the two-day/four-day test if the returned check is received by the depository bank on or before the depository bank's next banking day.~~

~~(2) Forward collection test.~~ A paying bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

~~(i) Of similar amount as the returned check;~~

~~(ii) Drawn on the depository bank; and~~

~~(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.~~

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~~Subject to the requirement for expeditious return, a paying bank may send a returned check to the depository bank, or to any other bank agreeing to handle the returned check expeditiously under §229.31(a). A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140. This paragraph does not affect a paying bank’s responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR part 210), or §229.30(c).~~

~~(b2) *Unidentifiable depository bank.* A paying bank that is unable to identify the depository bank with respect to a check may send the returned check to any bank that handled the check for forward collection ~~even if that bank does not agree to handle the check expeditiously under §229.31(a).~~ A paying bank sending a returned check under this paragraph to a bank that handled the check for forward collection and must advise the bank to which the check is sent that the paying bank is unable to identify the depository bank. ~~The expeditious return requirements in §229.30(a) do not apply to the paying bank’s return of a check under this paragraph.~~~~

~~(3) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140.~~

~~(4) Except as provided in paragraph (g) of this section, this section does not affect a paying bank’s responsibility to return a check within the deadlines required by the UCC or Regulation J (12 CFR part 210).~~

~~(b) *Expeditious return of checks.* (1) Except as provided in paragraph (d) of this section, if a paying bank determines not to pay a check, it shall return the check in an expeditious manner such that the check would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.~~

~~(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depository bank, the paying bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the depository bank would normally receive the returned check not~~

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later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day.

~~(c) Notice of nonpayment. Extension of deadline. The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR part 210), or §229.36(f)(2) is extended to the time of dispatch of such return or notice of nonpayment where a paying bank uses a means of delivery that would ordinarily result in receipt by the bank to which it is sent—~~

~~(1) If a paying bank determines not to pay a check in the amount of \$5,000 or more, it shall provide notice of nonpayment such that the notice would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), or telephone. On or before the receiving bank's next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4-108, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next cutoff hour or banking day referred to above; or~~

~~(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depository bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank. (i) To the extent available to the paying bank, notice must include the information contained in the check's MICR line when the check is received by the paying bank, as well as—~~

~~(A) Name of the payee(s);~~

~~(B) Amount;~~

~~(C) Date of the indorsement of the depository bank;~~

~~(D) The bank name, routing number, and trace or sequence number associated with the indorsement of the depository bank; and~~

~~(E) Reason for nonpayment.~~

~~(ii) If the paying bank is not sure of the accuracy of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.~~



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(iii) The notice may include other information from the check that may be useful in identifying the check being returned and the customer.

(d) *Exceptions to the expeditious return of checks and notice of nonpayment requirements.* The expeditious return and notice of nonpayment requirements of paragraphs (b) and (c) of this section do not apply if—

(1) The check is deposited in a depository bank that is not subject to subpart B of this part; or

(2) A paying bank is unable to identify the depository bank with respect to the check.

(e) Identification of returned check. A paying bank returning a check shall clearly indicate on the front of the check that it is a returned check and the reason for return. ~~If the paying bank is returning check is~~ a substitute check or an electronic returned check, the paying bank shall ~~place~~include this information ~~within the image of the original check that appears on the front of the~~ such that the information would be retained on any subsequent substitute check.

~~*(e) Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited in a depository bank that does not maintain accounts.~~

(f) Notice in lieu of return. If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in ~~§229.33(b)~~paragraph (c)(2) of this section. The copy or ~~written~~ notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this ~~section and to the other requirements of this~~ subpart.

(g) Extension of deadline. The deadline for return or notice of dishonor or nonpayment under the UCC or Regulation J (12 CFR part 210), or § 229.36(d)(3) and (4) is extended to the time of dispatch of such return or notice if the depository bank (or the receiving bank, if the depository bank is unidentifiable) receives the returned check or notice—

(1) On or before the depository bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depository bank or receiving bank) or later set by the depository bank (or receiving bank) under UCC 4-108, for all deadlines other than those described in paragraph (g)(2) of this section; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depository bank), for a deadline falling on a Saturday that is a banking day (as defined in the UCC) for the paying bank.



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(h) Payable-through and payable-at checks. A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart.

(g) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement.

§229.312 Returning bank's responsibility for return of checks.

(a) *Return of checks.* ~~A returning bank shall return a returned check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section.~~

(1) ~~*Two-day/four-day test.* Subject to the requirement of expeditious return under paragraph (b) of this section, a A returning bank may send a returned ~~returns a~~ check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by to the depository bank, to any other bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.~~

~~(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depository bank; or~~

~~(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depository bank.~~

~~If the last business day on which the returning bank may deliver a returned check to the depository bank is not a banking day for the depository bank, the returning bank meets this requirement if the returned check is received by the depository bank on or before the depository bank's next banking day.~~

(2) ~~*Forward collection test.* A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—~~

~~(i) Of similar amount as the returned check;~~

~~(ii) Drawn on the depository bank; and~~

~~(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank's cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2:00 p.m.~~

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~~Subject to the requirement for expeditious return, the returning bank may send the returned check to the depository bank, or to any bank agreeing to handle the returned check expeditiously under §229.31(a). The returning bank may convert the returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140. The time for expeditious return under the forward collection test, and the deadline for return under the U.C.G. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depository bank.~~

~~(b) *Unidentifiable depository bank.* A returning bank that is unable to identify the depository bank with respect to a returned check may send the returned check to—~~

~~(1) A any collecting bank that handled the returned check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or to a~~

~~(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check;~~

~~even if that collecting bank does not agree to handle the returned check expeditiously under §229.31(a). A returning bank sending a returned check under this paragraph to a bank must advise the bank to which the returned check is sent that the returning bank is unable to identify the depository bank. The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under §229.30(b), or from a returning bank under this paragraph, but that is able to identify the depository bank, must thereafter return the check expeditiously to the depository bank.~~

(3) A returning bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depository bank, the amount of the returned check, and a “2” in the case of an original check (or a “5” in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100-140.

~~(c) *Settlement Expeditious return of checks.* (1) Except as provided in paragraph (c) of this section, a returning bank shall settle with a bank sending return a returned check in an expeditious manner such that the check would normally be received by the depository bank~~



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~~not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank. to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depository bank. This settlement is final when made.~~

(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depository bank, the returning bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the depository bank would normally receive the returned check not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day.

(c) *Exceptions to the expeditious return of checks.* The expeditious return requirement of paragraph (b) of this section does not apply if—

(1) The check is deposited in a depository bank that is not subject to subpart B of this part;

(2) A paying bank is unable to identify the depository bank with respect to the check; or

(3) The bank handles a misrouted returned check pursuant to § 229.33(f).

~~(d) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.~~

~~(e) *Depository bank without accounts.* The expeditious return requirements of paragraph (a) of this section do not apply to checks deposited with a depository bank that does not maintain accounts.~~

~~(fd) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in §229.331(bc). The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other requirements of this subpart.~~

~~(e) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depository bank. This settlement is final when made.~~



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~~(f) Charges. A returning bank may impose a charge on a bank sending a returned check for handling the returned check.~~

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depository bank appearing on the returned check in the depository bank's indorsement or in magnetic ink on a qualified returned check.

§229.323 Depository bank's responsibility for returned checks and notices of nonpayment.

~~(a) *Acceptance of returned checks, Right to assert claim.* A depository bank shall accept returned checks and written notices of nonpayment (1) A paying bank or returning bank may be liable to a depository bank under § 229.38 for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying bank or returning bank could return a returned check to the depository bank electronically, directly or indirectly, by commercially reasonable means.~~

~~(2) For purposes of paragraph (a)(1) of this section, the depository bank that has asserted a claim has the burden of proof for demonstrating that the depository bank's arrangements meet the standard of paragraph (a)(1).~~

~~(b) *Acceptance of electronic returned checks and electronic notices of nonpayment.* A depository bank's agreement with the transferor bank governs the terms under which the depository bank will accept electronic returned checks and electronic written notices of nonpayment~~

~~(c) *Acceptance of paper returned checks and paper notices of nonpayment.* (1) A depository bank shall accept paper returned checks and paper notices of nonpayment during its banking day—~~

~~(4i) At a location, if any, at which presentment of paper checks for forward collection is requested by the depository bank; and~~

~~(2)(i) (A) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;~~

~~(ii) (B) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or~~

~~(iii) If the address in the indorsement is not in the same check processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement; or~~



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(~~iv~~C) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

(2) A depository bank may require that returned checks be separated from paper forward collection checks.

(d) Acceptance of oral notices of nonpayment. A depository bank shall accept oral notices of nonpayment during its banking day—

(1) At the telephone number indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment.

(~~be~~) *Payment.* (1) A depository bank shall pay the returning bank or paying bank returning the check to it for the amount of the check prior to the close of business on the depository bank's banking day on which it received the check ("payment date") by—

(~~4~~i) Debit to an account of the depository bank on the books of the returning bank or paying bank;

(~~2~~ii) Cash;

(~~3~~iii) Wire transfer; or

(~~4~~iv) Any other form of payment acceptable to the returning bank or paying bank;

(2) ~~provided that t~~The proceeds of the payment ~~are~~must be available to the returning bank or paying bank in cash or by credit to an account of the returning bank or paying bank on or as of the payment date. If the payment date is not a banking day for the returning bank or paying bank or the depository bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning bank or paying bank. These payments are final when made.

(~~ef~~) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depository bank, and the bank determines that it is not the depository bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depository bank directly or by means of a returning bank agreeing to handle the returned check or notice expeditiously under §229.31(a), or send the check or notice back to the bank from which it was received.

(~~dg~~) *Charges.* A depository bank may not impose a charge for accepting and paying checks being returned to it.

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~~§229.33 Notice of nonpayment.~~

~~(a) Requirement. If a paying bank determines not to pay a check in the amount of \$2,500 or more, it shall provide notice of nonpayment such that the notice is received by the depository bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), telephone, Fedwire, telex, or other form of telegraph.~~

~~(b) Content of notice. Notice must include the—~~

- ~~(1) Name and routing number of the paying bank;~~
- ~~(2) Name of the payee(s);~~
- ~~(3) Amount;~~
- ~~(4) Date of the indorsement of the depository bank;~~
- ~~(5) Account number of the customer(s) of the depository bank;~~
- ~~(6) Branch name or number of the depository bank from its indorsement;~~
- ~~(7) Trace number associated with the indorsement of the depository bank; and~~
- ~~(8) Reason for nonpayment.~~

~~The notice may include other information from the check that may be useful in identifying the check being returned and the customer, and, in the case of a written notice, must include the name and routing number of the depository bank from its indorsement. If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.~~

~~(c) Acceptance of notice. The depository bank shall accept notices during its banking day—~~

- ~~(1) Either at the telephone or telegraph number of its return check unit indicated in the indorsement, or, if no such number appears in the indorsement or if the number is illegible, at the general purpose telephone or telegraph number of its head office or the branch indicated in the indorsement; and~~
- ~~(2) At any other number held out by the bank for receipt of notice of nonpayment, and, in the case of written notice, as specified in §229.32(a).~~



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(dh) *Notification to customer.* If the depository bank receives a returned check ~~or~~ notice of nonpayment, or notice of recovery under § 229.35(b), it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check ~~or~~ notice of nonpayment, or notice of recovery, or within a longer reasonable time.

(ei) *Depository bank without accounts.* The requirements of this section with respect to notices of nonpayment do not apply to checks deposited in a depository bank that does not maintain accounts.

§229.34 Warranties and indemnities.

(a) Warranties with respect to electronic checks and electronic returned checks. (1) Each ~~paying bank or returning~~ bank that transfers or presents a returned check ~~an electronic check or electronic returned check~~ and receives a settlement or other consideration for it warrants ~~to the transferee returning bank, to any subsequent returning bank, to the depository bank, and to the owner of the check, that—~~

~~(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or §229.30(c) of this part;~~

~~(i) The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check, and~~

~~(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.~~

~~(2) It is authorized to return the check;~~

~~(2) Each bank that makes the warranties under paragraph (a)(1) of this section makes the warranties to—~~

~~(i) In the case of transfers for collection or presentment, the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and~~

~~(ii) In the case of transfers for return, the transferee returning bank, any subsequent returning bank, the depository bank, and the owner.~~



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~~(3) The check has not been materially altered; and~~

~~(4) In the case of a notice in lieu of return, the original check has not and will not be returned.~~

~~These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.~~

~~(b) *Warranty of notice of nonpayment.* Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depository bank, and to the owner of the check that—~~

~~(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or §229.30(c) of this part;~~

~~(2) It is authorized to send the notice; and~~

~~(3) The check has not been materially altered.~~

~~These warranties are not made with respect to checks drawn on a state or a unit of general local government that are not payable through or at a bank.~~

~~(b) *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (b)(1), "account" includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.~~

~~(2) If a paying bank asserts a claim for breach of warranty under paragraph (b)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under UCC 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.~~

~~(c) *Warranty of settlement amount, encoding, and offset warranties.* (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.~~

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(2) Each bank that transfers one or more checks or returned checks to a collecting bank, returning bank, or depository bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue ~~in magnetic ink on the check or returned check is correct regarding the check or returned check is accurate~~. For purposes of this paragraph, the information encoded after issue ~~on regarding~~ the check or returned check ~~includes means~~ any information ~~placed that could be encoded~~ in the MICR line of a ~~substitute check that represents that check or returned check paper check~~.

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depository bank, in an amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depository bank, that it receives from the other bank.

~~(d) *Transfer and presentment warranties with respect to a remotely created check* Returned check warranties. (1) ~~A~~Each paying bank or returning bank that transfers ~~or presents a remotely created~~a returned check and receives a settlement or other consideration ~~for it~~ warrants to the transferee returning bank, to any subsequent ~~collecting-returning~~ bank, ~~and the paying bank to the depository bank, and to the owner of the check, that – the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), “account” includes an account as defined in §229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.~~~~

~~(2) If a paying bank asserts a claim for breach of warranty under paragraph (d)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under U.C.C. 4-406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.~~

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to return the check;

(iii) The check has not been materially altered; and

(iv) In the case of a notice in lieu of return, the check has not and will not be returned.

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(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

(e) *Notice of nonpayment warranties.* (1) Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depository bank, and to the owner of the check that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to send the notice; and

(iii) The check has not been materially altered.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or check drawn on a state or a unit of general local government that are not payable through or at a bank.

(f) *Remote deposit capture indemnity.* (1) The indemnity described in paragraph (f)(2) of this section is provided by a depository bank that—

(i) Is a truncating bank under § 229.2(eee)(2) because it accepts deposit of an electronic image or other electronic information related to an original check;

(ii) Does not receive the original check;

(iii) Receives settlement or other consideration for an electronic check or substitute check related to the original check; and

(iv) Does not receive a return of the check unpaid.

(2) A bank described in paragraph (f)(1) of this section shall indemnify, as set forth in § 229.34(i), a depository bank that accepts the original check for deposit for losses incurred by that depository bank if the loss is due to the check having already been paid.

(3) A depository bank may not make an indemnity claim under paragraph (f)(2) of this section if the original check it accepted for deposit bore a restrictive indorsement inconsistent with the means of deposit.

(g) *Indemnities with respect to electronically-created items.* Each bank that transfers or presents an electronically-created item and receives a settlement or other consideration for

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it shall indemnify, as set forth in § 229.34(i), each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses that result from the fact that—

(1) The electronic image or electronic information is not derived from a paper check;

(2) The person on whose account the electronically-created item is drawn did not authorize the issuance of the item in the amount stated on the item or to the payee stated on the item (for purposes of this paragraph (g)(2), “account” includes an account as defined in section 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank); or

(3) A person receives a transfer, presentment, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has already paid.

~~(e)~~(h) Damages. Damages for breach of these warranties in this section shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.

(i) Indemnity amounts. (1) The amount of the indemnity in paragraphs (f)(2) and (g) of this section shall not exceed the sum of—

(i) The amount of the loss of the indemnified bank, up to the amount of the settlement or other consideration received by the indemnifying bank; and

(ii) Interest and expenses of the indemnified bank (including costs and reasonable attorney’s fees and other expenses of representation).

(2)(i) If a loss described in paragraph (f)(2) or (g) of this section results in whole or in part from the indemnified bank’s negligence or failure to act in good faith, then the indemnity amount described in paragraph (i)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified bank.

(ii) Nothing in this paragraph (i)(2) affects the rights of a person under the UCC or other applicable provision of state or federal law.

~~(f)~~(i) Tender of defense. If a bank is sued for breach of a warranty or for indemnity under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after reasonable receipt of the notice the bank notified does come in and defend.

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~~(g)(k)~~ *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty or for indemnity under this section to the bank that made the warranty or indemnification within 30 days after the claimant has reason to know of the breach or facts and circumstances giving rise to the indemnity and the identity of the warranting or indemnifying bank, the warranting or indemnifying bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

§229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall indorse the check in a manner that permits a person to interpret the indorsement, in accordance with ~~the indorsement standard set forth in appendix D of this part.~~ American National Standard (ANS) Specifications for Physical Check Endorsements, X9.100-111 (ANS X9.100-111), for a paper check other than a substitute check; ANS Specifications for an Image Replacement Document, X9.100-140 (ANS X9.100-140), for a substitute check; and ANS Specifications for Electronic Exchange of Check and Image Data – Domestic, X9.100-187 (ANS X9.100-187), for an electronic check; unless the Board by rule or order determines that different standards apply or the parties otherwise agree.

* * * * *

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the depositary bank indorsement as specified in appendix D the indorsement standard applicable to the check under paragraph (a) of this section. The other bank indorsing as depositary bank is considered the depositary bank for purposes of subpart C of this part.

§229.36 Presentment and issuance of checks.

~~(a) *Payable through and payable at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart.~~

~~(a) *Receipt of electronic checks.* The terms under which a paying bank will accept presentment of an electronic check is governed by the paying bank's agreement with the presenting bank.~~

~~(b) *Receipt at bank office or processing center.* A check is considered received by the paying bank when it is received:~~

~~(1) At a location to which delivery is requested by the paying bank;~~

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~~(2) At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form;~~

~~(3) At any branch or head office, if the bank is identified on the check by name without address; or~~

~~(4) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.~~

(b) Receipt of paper checks. (1) A paper check is considered received by the paying bank when it is received—

(i) At a location to which delivery is requested by the paying bank;

(ii) At an address of the bank associated with the routing number on the check, whether contained in the MICR line or in fractional form;

(iii) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address; or

(iv) At any branch or head office, if the bank is identified on the check by name without address.

(2) A bank may require that checks presented to it as a paying bank be separated from returned checks.

~~(c) [Reserved]~~

~~(d)~~(c) Liability of bank during forward collection. Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depository bank, and the depository bank's customer.

~~(e) Issuance of payable-through checks. (1) A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:~~

~~(i) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and~~

~~(ii) The words “payable through” followed by the name of the payable-through bank.~~

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~~(2) A bank is responsible for damages under §229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.~~

~~(f)(d) Same-day settlement.~~ (1) A paper check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph ~~(fd)~~(2) of this section, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank and demands payment under this paragraph ~~(fd)~~—

(i) At a location designated by the paying bank for receipt of paper checks under this paragraph ~~(fd)~~ ~~that is in the check processing region consistent with the routing number encoded in magnetic ink on the check and~~ at which the paying bank would be considered to have received the check under paragraph (b) of this section or, if no location is designated, at any location described in paragraph (b) of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph ~~(fd)~~(1)(i) of this section).

~~(2)~~ A paying bank may require that checks presented for settlement pursuant to this paragraph ~~(fd)~~(1) of this section be separated from other forward-collection checks or returned checks.

~~(23)~~ If presentment of a paper check meets the requirements of paragraph ~~(fd)~~(1) of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either: -

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

~~(34)~~ Notwithstanding paragraph ~~(fd)~~(~~23~~) of this section, if a paying bank closes on a business day and receives presentment of a paper check on that day in accordance with paragraph ~~(fd)~~(1) of this section, ~~the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either: -~~

(i) The paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either -

(iA) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or



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(#B) Returns the check.

(ii) If the closing is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph (fd)(23) of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

§229.38 Liability.

* * * * *

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with its expeditious return requirements under § 229.301(ab) and ~~to comply~~ with the deadline for return under the U.C.C., Regulation J (12 CFR part 210), or the extension of deadline under § 229.301(eg) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.301(ab) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§229.35), accepting a returned check or notice of nonpayment (~~§229.32(a) and 229.33(b), (c), and (d)~~), or otherwise, the damages incurred by that person under §229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for certain aspects of checks.*—(1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with §229.35. A depository bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with §229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with §229.35; or

(ii) Causes an indorsement that previously was applied in accordance with §229.35 to become illegible.

~~(2) NOTE:~~ Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depository bank, or reconverting bank for purposes of paragraph (c) of this section.

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* * * * *

§229.39 Insolvency of bank.

(a) *Duty of receiver to return unpaid checks*. A check or returned check in, or coming into, the possession of a paying, collecting bank, depository bank, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

~~(b) *Preference against paying or depository bank*. If a paying bank finally pays a check, or if a depository bank becomes obligated to pay a returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a preferred claim against the paying bank or the depository bank.~~

(b) *Claims against banks for checks not returned by receiver*. If a check or returned check is not returned by the receiver, trustee, or agent in charge of the closed bank under paragraph (a) of this section, a bank shall have claims with respect to the check or returned check as follows:

(1) If the paying bank has finally paid the check, or if a depository bank is obligated to pay the returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a claim against the paying bank or the depository bank.

(2) If a collecting bank, paying bank, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a claim against the collecting bank or returning bank.

~~(c) *Preference against collecting, paying, or returning bank*. If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting or returning bank.~~

~~(dc) *Preference-Preferred claim against presenting bank for breach of warranty*. If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in §229.34(c) (1) or (3) with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.~~



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(ed) *Finality of settlement.* If a paying or depository bank gives, or a collecting bank, paying bank, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

§229.40 Effect of merger transaction.

(a) *In general.* For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

~~(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.~~

§229.42 Exclusions.

The expeditious -return (§§229.3~~10~~10(~~ab~~) and 229.3~~12~~12(~~ab~~)), notice-of-nonpayment (§229.3~~31~~31(~~c~~)), and same-day settlement (§229.36(~~fd~~)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

§229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) * * *

(2) *Pacific island check* means =

(i) Aa demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in §229.2(k); and-

(ii) An electronic image of, and electronic information derived from, a demand draft or returned demand draft drawn on or payable through or at a Pacific island bank that-

(A1) Is sent to a receiving bank pursuant to an agreement between the sender and the receiving bank; and

(B2) Conforms with ANS X9.100-187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

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(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k) or an electronic check defined in § 229.2(ggg), the bank is subject to the following sections of this part (and the word “check” in each such section is construed to include a Pacific island check)—

(1) ~~§229.340(a)~~; ~~except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;~~ (Checks under this subpart), and (b) (Writings);

(2) §229.32; (Returning bank’s responsibilities for return of checks) except that the returning bank is not subject to the requirement to return a Pacific Island check in an expeditious manner;

(3) ~~§229.34(e)(2)3(b)~~ (Acceptance of electronic returned checks and electronic notices of nonpayment), (c)(3) (Acceptance of paper returned checks and paper notices of nonpayment), § 229.33 (d) (Acceptances of oral notices of nonpayment), § 229.33 (e) (Payment), and §229.33 (f) (Misrouted returned checks and written notices of nonpayment), §229.33 (g) (Charges);

(4) § 229.34(a) (Warranties with respect to electronic checks and electronic returned checks), § 229.34 (b) (Transfer and presentment warranties with respect to a remotely-created check), § 229.34 (c)(2) (Cash letter total warranty), § 229.34 (c)(3) (Encoding warranty), § 229.34 (f) (Remote deposit capture warranty), § 229.34 (g) (Indemnities with respect to electronically-created items), § 229.34 (h) (Damages), § 229.34 (i) (Indemnity amounts), and § 229.34 (j) (Tender of defense);

~~(45)~~ §229.35 (Indorsements); for purposes of §229.35(c) (Indorsement on a bank), the Pacific island bank is deemed to be a bank;

~~(56)~~ §229.36 (ca) (Liability of bank during forward collection);

~~(67)~~ §229.37 (Variation by agreement);

~~(78)~~ §229.38 (a) and (e) through (h) (Liability), except for §229.38(b) (Paying bank’s failure to make timely return);

~~(89)~~ §229.39 (a), (b), (c) and (e) (Insolvency of bank), except for §229.39(c) (Preferred claim against presenting bank for breach of warranty); and

~~(109)~~ §§229.40 (Effect of merger transaction), §229.41 (Relation to state law) and § through 229.42 (Exclusions).

Subpart D—Substitute Checks

§ 229.51 General provisions governing substitute checks.



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* * * * *

(b) * * *

(2) Identifies the reconverting bank in a manner that preserves any previous reconverting bank identifications, in accordance with ANS X9.100-140 ~~and appendix D of this part~~; and

(3) Identifies the bank that truncated the original check, in accordance with ANS X9.100-140 ~~and appendix D of this part~~.

* * * * *

§ 229.52 Substitute check warranties.

(a) *Content and provision of substitute check warranties.* (1) A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

(i) The substitute check meets the requirements for legal equivalence described in §229.51(a)(1) ~~and~~ (2); and

(ii) No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

§229.53 Substitute check indemnity.

(a) *Scope of indemnity.* (1) A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

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(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

Appendix D to Part 229—[Removed and Reserved]

19. Appendix D to Part 229 is removed and reserved.

Appendix E to Part 229—Commentary

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II. Section 229.2 Definitions

* * * * *

Z. 229.2(z) *Paying Bank*

* * * * *

2. Under ~~§§229.310 and 229.36(a)~~, a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks and notice of nonpayment requirements of Subpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. The Board believes that the EFA Act makes a clear connection between availability and the time it takes for checks to be cleared and returned. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor ~~would may~~ delay the return of these checks, increasing the risks to depository banks. Subpart C ~~of this part requires places on~~ payable-through and payable-at banks ~~to return a check expeditiously the requirements of expeditious return~~ based on the time the payable-through or payable-at bank received the check for forward collection.

* * * * *

DD. 229.2(dd) *Routing Number*

1. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears



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in the upper right hand corner of the check) and the nine-digit form. The nine-digit form of the routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR line strip; see ANSI X9.13-1983). In the case of an electronic check, the routing number of the paying bank is contained in the electronic image of the check (in nine-digit form and fractional form) and in the electronic information related to the check (in nine-digit form). When a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank. ~~Subpart C- Industry standards~~ requires depository banks, ~~and~~ subsequent collecting banks, and returning banks to place their routing numbers in nine-digit form in their indorsements. (See § 229.35 and commentary thereto).

* * * * *

VV. 229.2(vv) MICR Line

1. Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and in accordance with ANS X9.100-140 for substitute checks, and must be contained in electronic checks in accordance with ANS X9.100-187. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required. Banks that exchange checks electronically may agree to other standards for including MICR line information in the checks that they exchange electronically.

* * * * *

BBB. 229.2(bbb) Sufficient Copy and Copy

1. A "copy" or a "sufficient copy" as defined in 229.2(bbb) must be a paper reproduction of a check, unless the parties sending and receiving the copy otherwise agree. Therefore, A an electronic image of a check therefore is not a "copy" or a "sufficient copy" absent an agreement to that effect. However, i If a customer has agreed to receive such information electronically, however, a bank that is required to provide a copy n original check or sufficient copy may satisfy that requirement by providing an electronic image in accordance with (See § 229.58), and the commentary thereto.

2. A sufficient copy, which is used to resolve claims related to the receipt of a substitute check, must be a copy of the original check.

32. A bank under §229.53(b)(3) may limit its liability for an indemnity claim and under §§229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

Examples.



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- a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a sufficient copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.
- b. A copy of the original check that does not accurately represent all the information on both the front and back of the original check also could be a sufficient copy if such copy contained all the information necessary to determine the validity of the relevant claim. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for \$1,000, but he or she believed that the check was written for only \$100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer's claim regarding the amount of the check was valid.

* * * * *

GGG. 229.2(ggg) Electronic Check and Electronic Returned Check

1. Banks often enter into agreements under which a check may be transferred, returned, or presented electronically instead of transferring, returning, or presenting the paper check. For example, an agreement may provide that either an electronic image of the check or electronic information related to the check may be sent instead of the paper check. In order to satisfy Regulation CC's definition of "electronic check" (or "electronic returned check"), however, both the electronic image of the check and electronic information derived from the check must be sent. A sending bank and receiving bank may also agree, for example, that instead of sending the electronic check or electronic returned check directly to the receiving bank, the electronic check or electronic returned check may be sent to an intermediary that stores the electronic check or electronic returned check on the receiving bank's behalf and makes the electronic check or electronic returned check available for the receiving bank to retrieve.

2. A sending bank must have an agreement with the receiving bank in order to send an electronic check instead of a paper check. The agreement to receive an electronic check or electronic returned check may be either bilateral or through a Federal Reserve Bank operating circular, clearinghouse rule, or other interbank agreement. (See UCC 4-110).

3. ANS X9.100-187 is the most prevalent industry standard for electronic checks and electronic returned checks that will enable banks to create substitute checks. Multiple standards, however, exist that would enable a bank to create a substitute check from an electronic check. Therefore, the banks exchanging electronic checks may agree that a different standard applies to electronic checks exchanged between the two banks. Additionally, banks that exchange checks electronically may agree to transfer, present, or

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return only electronic images of checks or only electronic information related to checks. In these situations, the sending bank and receiving bank will have agreed to a different standard as ANS X9.100-187 requires both an electronic image and electronic information.

4. Electronic checks and electronic returned checks as defined in Regulation CC are subject to subpart C, except as otherwise provided in that subpart. (See § 229.30 and commentary thereto).

HHH. 229.2(hhh) Electronically-created item

1. Electronically-created items are also sometimes referred to in the industry as “electronic payment orders” or “EPOs.”

2. Because an electronically-created item as defined in Regulation CC never existed in paper form, it does not meet the definition of “electronic check” in 229.2(ggg) and therefore an electronically-created item cannot be used to create a substitute check that is the legal equivalent of the original paper check.

3. An electronically-created item can resemble an electronic image of a paper check or an electronic image of a remotely created check. (See 229.2(fff) (definition of remotely created check)).

Examples.

a. A corporate customer of a bank, rather than printing and mailing a paper check to a payee, electronically creates an image that looks like an image of the corporate customer’s paper checks and emails the image to the payee.

b. A consumer uses a smart-phone application through which the consumer provides the payee name, amount, and the consumer’s signature. The application electronically sends this information, appearing formatted as a check, to the payee.

c. A consumer calls his utility company to make an emergency bill payment, and provides his bank account information. The utility company uses this information to create an electronically-created item and deposits the electronically-created item with its bank to obtain payment from the consumer.

XVI. Section 229.30 *Paying Bank’s Responsibility for Return of Checks—Electronic Checks and Electronic Information*

A. 229.30(a) *Return of Checks Under This Subpart*

1. This section requires a paying bank (which, for purposes of Subpart C, may include a payable-through and payable-at bank; see §229.2(z)) that determines not to pay a check to return the check expeditiously. Generally, a check is returned expeditiously if the return



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~~process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the “two-day/four-day” test, and the “forward collection” test.~~

~~1. A bank may agree to receive an electronic check or electronic returned check from another bank instead of a paper check or returned check. (See § 229.2(bbb) and commentary thereto). Section 229.30(a) does not give a bank the right to send an electronic check or electronic returned check absent an agreement to do so with the receiving bank.~~

~~2. Under the “two-day/four-day” test, if a check is returned such that it would normally be received by the depository bank two business days after presentment where both the paying and depository banks are located in the same check processing region or four business days after presentment where the paying and depository banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases, however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depository bank to be collected. Therefore, the Board has included a “forward collection” test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depository banks within the two-day or four-day period.~~

~~2. Electronic checks and electronic returned checks are subject to subpart C of this part as if they were checks or returned checks, unless otherwise provided in subpart C. For example, § 229.31(c), which requires a paying bank to provide a notice of nonpayment if the paying bank determines not to pay a check in the amount of \$5,000 or more, also applies when a paying bank determines not to pay an electronic check in the amount of \$5,000 or more. A depository bank’s obligation to pay for a returned check (§ 229.33(e)) also applies with respect to an electronic returned check.~~

~~Additionally, §§ 229.33(b) and 229.36(a) specify that the parties’ agreements govern the receipt of electronic returned checks and electronic written notices of nonpayment, and electronic checks, respectively. Section 229.34(a) sets forth warranties that are given only with respect to electronic checks and electronic returned checks and section 229.34(f) sets forth an indemnity given only with respect to remote deposit capture. Warranties that apply to paper checks or paper returned checks also apply to electronic checks and electronic returned checks, including § 229.34(b) (transfer and presentment warranties with respect to remotely created checks), § 229.34(c) (settlement amount, encoding, and offset warranties), § 229.34(d) (returned check warranties), and § 229.34(e) (notice of nonpayment warranties). The parties may, by agreement, vary the effect of the provisions in subpart C of this part as they apply to electronic checks and electronic returned checks, except that as set forth in § 229.37, no agreement can disclaim the responsibility of a bank for its own lack of good faith or failure to exercise ordinary care. (See § 229.37 and commentary thereto).~~

~~3. Two-day/four-day test.~~



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~~a. Under the first test, a paying bank must return the check so that the check would normally be received by the depository bank within specified times, depending on whether or not the paying and depository banks are located in the same check processing region.~~

~~b. Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depository bank by 4:00 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depository bank located in the same check processing region by 4 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depository bank, the deadline to complete return is 4 p.m. (local time of the depository bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depository bank by 4:00 p.m. on Friday.~~

~~c. This two-day/four-day test does not necessarily require actual receipt of the check by the depository bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depository bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.~~

~~d. Often, returned checks will be delivered to the depository bank together with forward collection checks. Where the last day on which a check could be delivered to a depository bank under this two-day/four-day test is not a banking day for the depository bank, a returning bank might not schedule delivery of forward collection checks to the depository bank on that day. Further, the depository bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank before the close of the depository bank's next banking day and the return will still be considered expeditious. Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depository bank.~~

~~e. The times specified in this two-day/four-day test are based on estimated forward collection times, but take into account the particular difficulties that may be encountered in handling returned checks. It is anticipated that the normal process for forward collection of a check coupled with these return requirements will frequently result in the return of checks before the proceeds of nonlocal checks, other than those covered by §229.10(c), must be made available for withdrawal.~~

~~f. Under this two-day/four-day test, no particular means of returning checks is required, thus providing flexibility to paying banks in selecting means of return. The Board anticipates that paying banks will often use returning banks (see §229.31) as their agents to return checks to depository banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time under this two-day/four-day test, unless the paying bank~~



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~~has reason to believe that these schedules do not reflect the actual time for return of a check.~~

~~3. Certain provisions of subpart C relate solely to paper checks or paper returned checks, as specified, such as § 229.33(c) (acceptance of paper returned checks) and § 229.36(d) (same-day settlement).~~

~~4. Forward collection test.~~

~~a. Under the second, “forward collection,” test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depository bank.~~

~~b. Generally, the paying bank would satisfy the “forward collection” test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under §229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.~~

~~c. The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.~~

~~d. Under the “forward collection” test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depository bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.~~

~~e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (See §229.2(cc).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.~~

~~f. Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depository bank.~~

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5. Examples.

~~a. If a check is presented to a paying bank on Monday and the depository bank and the paying bank are participants in the same clearinghouse, the paying bank should arrange to have the returned check received by the depository bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depository bank if the paying bank received the deposit by noon on Tuesday.~~

~~b. i. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depository bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under §229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)~~

~~ii. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depository bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depository banks.~~

~~iii. In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.~~

~~iv. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.~~

~~c. If a paying bank normally sends its forward collection checks directly to the depository bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depository bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depository bank, but could send them to a correspondent or a Federal Reserve Bank.~~

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~~d. The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depository bank directly to the depository bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depository bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.~~

~~6. Choice of returning bank. In meeting the requirements of the forward collection test, the paying bank is responsible for its own actions, but not for those of the depository bank or returning banks. (This is analogous to the responsibility of collecting banks under U.C.C. 4-202(c).) For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank (including delay to create a qualified returned check), generally the paying bank has met its requirements. (See §229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depository bank as quickly as the forward collection of a check drawn on the depository bank or, where the returning bank takes a day to create a qualified returned check under §229.31(a), one day later than the forward collection time. If a paying bank returns a check on its banking day of receipt without settling for the check, as permitted under U.C.C. 4-302(a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.~~

~~7. Qualified returned checks. Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business-day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100-140 for substitute checks.~~

~~8. Routing of returned checks.~~

~~a. In effect, under either test, the paying bank acts as an agent or subagent of the depository bank in selecting a means of return. Under §229.30(a), a paying bank is authorized to route the returned check in a variety of ways:~~

~~i. It may send the returned check directly to the depository bank by courier or other means of delivery, bypassing returning banks; or~~

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~~ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under §229.31(a), regardless of whether or not the returning bank handled the check for forward collection.~~

~~b. If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depository bank at any location permitted under §229.32(a).~~

~~9. Midnight deadline.~~

~~a. Except for the extension permitted by §229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. 4-301 and 4-302, which continue to apply. Under U.C.C. 4-302, a paying bank is “accountable” for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. 3-418(c) and 4-215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.~~

~~b. The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable-through or a payable-at bank that is defined as a paying bank (see §229.2(z)) and that returns a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. 4-301. (See discussion of §229.36(a).)~~

~~c. The liability section of this subpart (§229.38) provides that a paying bank is not subject to both “accountability” for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under U.C.C. 4-208, notwithstanding that the paying bank has returned the check. (See Commentary to §229.33(a).)~~

~~10. U.C.C. provisions affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:~~

~~a. Section 4-301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.~~

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~~b. Section 4-301(a), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under §229.31(c), not by revocation of settlement.~~

~~B. 229.30(b) Unidentifiable Depository Bank~~

~~1. In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return clerks will readily identify the depository bank from the depository bank indorsement required under §229.35 and appendix D. In cases where the paying bank is unable to identify the depository bank, the paying bank may, in accordance with §229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depository bank under §229.31(a). The returning bank may be better able to identify the depository bank.~~

~~2. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depository bank under §229.31(a). A paying bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. This information will warn the bank that this check will require special research and handling in accordance with §229.31(b). The returned check may not be prepared for automated return. The return of a check to a bank that handled the check for forward collection is consistent with §229.35(b), which requires a bank handling a check to take up the check if it has not been paid.~~

~~3. The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank. Although the lack of a requirement of expeditious return will create risks for the depository bank, in many cases the inability to identify the depository bank will be due to the depository bank's, or a collecting bank's, failure to use the indorsement required by §229.35(a) and appendix D. If the depository bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depository bank is due to indorsements or other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depository bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by~~

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~~the depository bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.~~

~~4. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depository bank's indorsement, making the indorsement unreadable. (See §229.38(d).)~~

~~5. A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. 4-301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in §229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under §229.35(b) where the depository bank is insolvent or in other cases as provided in §229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. 4-208.~~

~~B. 229.30(b) Writings~~

~~1. Provisions in subpart C of this part require that a paying bank or returning bank send information in writing. For example, § 229.31(f) requires that a notice in lieu be either a copy of the check or a written notice of nonpayment. A bank may send information required to be in writing in electronic form if the bank sending the information has an agreement with the bank receiving the information to do so.~~

~~C. 229.30(c) Extension of Deadline~~

~~1. This paragraph permits extension of the deadlines for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by §210.9 of Regulation J (12 CFR part 210) or §229.36(f)(2) of this part), but not of the duty of expeditious return, in two circumstances:~~

~~a. A paying bank may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the receiving bank on or before the receiving bank's next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4-108. The extension also applies if the check reaches the bank to which it is sent later than the time described in the previous sentence if highly expeditious means of transportation are used. For example, a West Coast~~

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~~paying bank may use this further extension to ship a returned check by air courier directly to an East Coast returning bank even if the check arrives after the returning bank's cutoff hour. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph XVI.C.1.b of this appendix).~~

~~b. A paying bank may observe a banking day, as defined in the applicable U.C.C., on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the U.C.C. deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.~~

~~2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in U.C.C. 4-301 and 4-302, §§210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and §229.36(f)(2) of this part. As these extensions are designed to speed (§229.30(c)(1)), or at least not slow (§229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in §229.30(a) is required.~~

~~3. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.~~

~~4. This paragraph directly affects U.C.C. 4-301 and 4-302 and §§210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.~~

~~D. 229.30(d) Identification of Returned Check~~

~~1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as "Refer to Maker" is permissible in appropriate cases. If the returned check is a substitute check, the reason for return must be placed within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. If the paying bank places the returned check in a carrier envelope, the carrier envelope~~

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~~should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.~~

~~E. 229.30(e) Depository Bank Without Accounts~~

~~1. Subpart B of this regulation applies only to “checks” deposited in transaction-type “accounts.” Thus, a depository bank with only time or savings accounts need not comply with the availability requirements of Subpart B. Collecting banks will not have couriers delivering checks to these banks as paying banks, because no checks are drawn on them. Consequently, the costs of using a courier or other expedited means to deliver returned checks directly to such a depository bank may not be justified. Thus, the expedited return requirement of §229.30(a) and the notice of nonpayment requirement of §229.33 do not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. 4-301 and 4-302 and §210.12 of Regulation J (12 CFR 210.12) would continue to apply to these checks. Returning banks also would be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depository bank under the same rules as checks deposited in other banks, with the exception of the expeditious return and notice of nonpayment requirements of §§229.30(a), 229.31(a), and 229.33.~~

~~2. The expeditious return requirements also apply to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not depository institutions within the meaning of the EFA Act, and therefore are not subject to the expedited availability and disclosure requirements of Subpart B. These banks do, however, maintain accounts as defined in §229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depository bank, in accordance with the requirements of this section.~~

~~F. 229.30(f) Notice in Lieu of Return~~

~~1. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in §229.33(b). The copy or written notice must clearly indicate it is a notice in lieu of return and must be handled in the same manner as other returned checks. Notice by telephone, telegraph, or other electronic transmission, other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depository banks are informed that the notice carries value. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or~~

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~~from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in §229.35(b). A bank using a notice in lieu of return gives a warranty under §229.34(a)(4) that the original check has not been and will not be returned.~~

~~2. The requirement of this paragraph supersedes the requirement of U.C.C. 4-301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.~~

~~3. The notice in lieu of return is subject to the provisions of §229.30 and is treated like a returned check for settlement purposes. If the original check is over \$2,500, the notice of nonpayment under §229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of §229.33.~~

~~4. If not all of the information required by §229.33(b) is available, the paying bank may make a claim against any prior bank handling the check as provided in §229.35(b).~~

~~G. 229.30(g) Reliance on Routing Number~~

~~1. Although §229.35 and appendix D require that the depository bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement) when it is received by the paying bank.~~

~~2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under §229.38(a).~~

XVII. Section 229.31 *Returning-Paying* Bank's Responsibility for Return of Checks and Notices of Nonpayment

A. 229.31(a) Return of Checks

~~1. The standards for return of checks established by this section are similar to those for paying banks in §229.30(a). This section requires a returning bank to return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check.~~

1. Routing of returned checks.

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a. This subsection is subject to the requirements of expeditious return provided in § 229.31(b).

b. The paying bank acts, in effect, as an agent or subagent of the depository bank in selecting a means of return. Under § 229.31(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by sending an electronic returned check directly to the depository bank if the paying bank has an agreement with the depository bank to do so, or by using a courier or other means of delivery, bypassing returning banks; or ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check or electronic returned check, regardless of whether or not the returning bank handled the check for forward collection.

c. If the paying bank elects to return the check directly to the depository bank, it is not necessarily required to return the check to the branch of first deposit. A paper check may be returned to the depository bank at any physical location permitted under § 229.33(c).

~~2. A returning bank agrees to handle a returned check for expeditious return to the depository bank if it:~~

~~a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;~~

~~b. Handles a returned check for return that it did not handle for forward collection; or~~

~~c. Otherwise agrees to handle a returned check for expeditious return.~~

2. a. In some cases, a paying bank will be unable to identify the depository bank through the use of ordinary care and good faith. These cases are now rare as depository banks generally apply their indorsements electronically. A paying bank, for example, would be unable to identify the depository bank if the depository bank's indorsement is neither in an addenda record nor within the image of the check that was presented electronically. A paying bank, however, would not be "unable" to identify the depository bank merely because the depository bank's indorsement is available within the image rather than attached as an addenda record.

b. In cases where the paying bank is unable to identify the depository bank, the paying bank may send the returned check to a returning bank that agrees to handle the returned check. The returning bank may be better able to identify the depository bank.

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c. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the presenting bank or a prior collecting bank is required to accept the returned check and send it to another prior collecting bank in the path used for forward collection or to the depository bank. If the paying bank has an agreement to send electronic returned checks to a bank that handled the check for forward collection, the paying bank may send the electronic returned check to that bank.

d. A paying bank returning a check to a prior collecting bank because it is unable to identify the depository bank must advise that bank that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on each check for which the depository bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties. The advice will warn the bank that this check will require special research and handling in accordance with § 229.32(a)(2). The returned check may not be prepared as a qualified return.

e. A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depository bank is insolvent or in other cases as provided in § 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC 4-208.

~~3. Two-day/four-day test. As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it would normally be received by the depository bank by 4:00 p.m. either two or four business days after the check was presented to the paying bank, depending on whether or not the paying bank is located in the same check processing region as the depository bank. This is the same test as the two-day/four-day test applicable to paying banks. (See Commentary to §229.30(a).) While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. In effect, the two-day/four-day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.~~

3. Midnight deadline. Except for the extension permitted by § 229.31(g), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under UCC 4-301 and 4-302, which continue to apply. Under UCC 4-302, a paying bank is "accountable" for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under UCC 3-418(c) and 4-215(a), late return constitutes payment and



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would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, the UCC midnight deadline gives the paying bank an incentive to make a prompt return.

~~4. Forward collection test.~~

~~a. The “forward collection” test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depository bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.~~

~~b. Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks (“raw returns”), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.~~

4. UCC provisions affected. This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

a. Section 4–301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depository bank or to a returning bank.

b. Section 4–301(a), in that settlement for returned checks is made under § 229.32(e), not by revocation of settlement.

~~5. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for returned checks may not be earlier than 2:00 p.m. The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depository banks.~~

~~6. Examples.~~

~~a. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depository bank and the returning bank are participants in the same~~

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~~clearinghouse, the returning bank should arrange to have the returned check received by the depository bank by Tuesday. This would be the same day that it would deliver a forward collection check drawn on the depository bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.~~

~~b. i. If a returning bank receives a returned check, and the returning bank normally would collect a forward collection check drawn on the depository bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under §229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depository bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.~~

~~ii. A returning bank must return a check to the depository bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depository bank.~~

~~iii. For some depository banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts normally does not have checks presented to it because the drafts are normally sent to the payable-through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depository bank and the location of the depository bank, and determining whether similarly situated banks normally would deliver forward collection checks to the depository bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.~~

~~7. Qualified returned checks.~~

~~a. The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under U.C.C. 4-202 in returning a check. A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. 4-202 and §210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check~~



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~~that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100-140 for substitute checks.~~

~~b. If the returning bank is sending the returned check directly to the depository bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under §229.38 for losses caused by any negligence or under §229.34(c)(3) for breach of an encoding warranty. The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.~~

~~8. Routing of returned check.~~

~~a. Under §229.31(a), the returning bank is authorized to route the returned check in a variety of ways:~~

~~i. It may send the returned check directly to the depository bank by courier or other expeditious means of delivery; or~~

~~ii. It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depository bank under this section regardless of whether or not the returning bank handled the check for forward collection.~~

~~b. If the returning bank elects to send the returned check directly to the depository bank, it is not required to send the check to the branch of the depository bank that first handled the check. The returned check may be sent to the depository bank at any location permitted under §229.32(a).~~

~~9. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See U.C.C. 4-202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depository bank. (See §229.38.) A returning bank must handle a notice in lieu of return as expeditiously as a returned check.~~

~~10. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:~~

~~a. Section 4-202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.~~

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~~b. Section 4-214(a), in that settlement for returned checks is made under §229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.~~

~~B. 229.31(b) Unidentifiable Depository Bank Expeditious Return of Checks~~

~~1. This section is similar to §229.30(b), but applies to returning banks instead of paying banks. In some cases a returning bank will be unable to identify the depository bank with respect to a check. Returning banks agreeing to handle checks for return to depository banks under §229.31(a) are expected to be expert in identifying depository bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, the returning bank may send the returned check to a returning bank that agrees to handle the returned check for expeditious return under §229.31(a), or it may send the returned check to a bank that handled the check for forward collection, even if that bank does not agree to handle the returned check expeditiously under §229.31(a).~~

~~1. This section requires a paying bank (which, for purposes of subpart C, may include a payable-through and payable-at bank (see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Section 229.31(d) sets forth exceptions to this general rule. If a paying bank is not subject to the requirement for expeditious return under § 229.31(b), the paying bank, nonetheless, must return the check within its deadlines under the UCC, Regulation J (12 CFR part 210) or §§ 229.36(d)(3) and (f)(4), as extended by § 229.31(g), for returning the item or sending notice.~~

~~2. If the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank. As in the case of paying banks under §229.30(b), a returning bank's sending of a check to a bank that handled the check for forward collection under §229.31(b) is not subject to the expeditious return requirements of §229.31(a).~~

2. Two-day test

a. A returned check, including the original check, substitute check, or electronic returned check, is returned expeditiously if a paying bank sends the returned check in a manner such that the returned check would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.

b. A paying bank may satisfy its expeditious return requirement by returning either an electronic returned check or a paper check. For example, a paying bank could meet the expeditious return test by sending an electronic returned check directly to the depository bank, if the paying bank has an agreement with the depository bank

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to do so, such that it normally would reach the depository bank by the specified deadline, or sending an electronic returned check to a returning bank, if the paying bank has an agreement with the returning bank to do so, within the returning bank's timeframe for delivering electronic returned checks to the depository bank within the return deadline. A paying bank that sends a returned check in paper form would typically need a highly expeditious means of delivery to meet the expeditious return test.

c. This test does not require actual receipt of the returned check by the depository bank within the specified deadline. In determining whether an electronic returned check would normally reach a depository bank within the specified deadline, a paying bank may rely on a returning bank's return deadlines and availability schedules for electronic returned checks and returned checks destined for the depository bank. A paying bank may not rely on the availability schedules if the paying bank has reason to believe that these schedules do not reflect the actual time for return of an electronic returned check to the depository bank to which the paying bank is returning the check. The paying bank is not responsible for unforeseeable delays in the return of the check, such as communication failures or transportation delays.

d. Where the second business day following presentment of the check to the paying bank is not a banking day for the depository bank, the depository bank might not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depository bank, the check may be delivered to the depository bank not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day and the return will still be considered expeditious.

e. Paying banks and returning banks are subject to the expeditious return rule, however, under section 229.33(a) a paying or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying or returning bank could return a returned check to the depository bank electronically by commercially reasonable means. The depository bank has the burden of proof for demonstrating that its arrangements are commercially reasonable.

~~3. The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4-202(b). (See definition of returning bank in §229.2(cc).)~~

3. Examples.

a. The paying bank and depository bank have a bilateral agreement under which the depository bank agrees to receive electronic returned checks directly from the paying bank. If a check is presented to a paying bank on Monday, the paying bank should send the returned check such that an electronic returned check normally would be received by the depository bank by 2 p.m. (local time of the depository

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bank) on Wednesday. This result is the same if, instead of a bilateral agreement, the paying bank and depositary bank are members of the same clearinghouse and agree to exchange electronic returned checks under clearinghouse rules.

b. The depositary bank has an agreement to receive electronic returned checks from Returning Bank A but not from the paying bank. The paying bank, however, has an agreement with Returning Bank A to send electronic returned checks to Returning Bank A. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday. A paying bank may satisfy this requirement by sending either an electronic returned check or a paper returned check to Returning Bank A in a manner that permits Returning Bank A to send an electronic returned check to the depositary bank by 2 p.m. on Wednesday. The paying bank may also send a paper returned check to the depositary bank if a paper returned check would normally be received by the depositary bank by 2 p.m. on Wednesday.

c. The paying bank has an agreement to send electronic returned checks to Returning Bank A. The depositary bank has an agreement to receive electronic returned checks from Returning Bank B. The paying bank does not have an agreement to send electronic returned checks to Returning Bank B. Returning Bank A, however, has an agreement to send electronic returned checks to Returning Bank B. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday.

~~4. Where a returning bank receives a check that it does not agree to handle expeditiously under §229.31(a), such as a check sent to it under §229.30(b), but the returning bank is able to identify the depositary bank, the returning bank must thereafter return the check expeditiously to the depositary bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depositary bank or by other reasonably prompt means.~~

~~5. As in the case of a paying bank returning a check under §229.30(b), a returning bank returning a check under this paragraph to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. The returned check may not be prepared for automated return.~~

C. 229.31(c) Settlement Notice of Nonpayment

~~1. Under the U.C.C., a collecting bank receives settlement for a check when it is presented to the paying bank. The paying bank may recover the settlement when the~~

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~~paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.~~

1. Requirement

a. The paying bank must send a notice of nonpayment if it decides not to pay a check in the amount of \$5,000 or more. Except in the case where the returned check or a notice in lieu of return serves as the notice of nonpayment, the notice of nonpayment carries no value, and the check or substitute check must be returned in addition to the notice of nonpayment. The paying bank must send the notice of nonpayment such that it would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following presentment. In determining whether the notice requirement is satisfied, the paying bank may rely on the availability schedules of a third party that provides the notice on behalf of the paying bank as the time that the notice is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

b. A bank identified by routing number as the paying bank is considered the paying bank under this subpart and would be required to provide a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See commentary to the definition of paying bank in § 229.2(z)). A bank designated as a payable-through or payable-at bank and to which the check is sent for payment or collection is responsible for the notice of nonpayment requirement. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities.

c. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(e), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.

d. The return of the check itself may serve as the required notice of nonpayment. In some cases, the returned check may be received by the depository bank within the time requirements of § 229.31(c)(1) and no notice other than the return of the check will be necessary. If the check is not received by the depository bank within the time limits for notice, the return of the check may not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the

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paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.

e. The requirement for notice does not affect the requirements for return of the check under the UCC (or § 229.31(b)). A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under UCC 4-208, notwithstanding that the paying bank may have returned the check. (See UCC 4-208 and 4-302).

~~2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See §229.36(d) and Commentary to §229.35(b).)~~

2. Content of notices

a. This paragraph provides that, to the extent the information is available to the paying bank, the notice must at a minimum contain the information contained in the check's MICR line when the check was received by the paying bank. The MICR line information includes the paying bank's routing number, the account number of the paying bank's customer, the check number, and auxiliary on-us fields for corporate checks, and may include the amount of the check.

b. Although it has no duty to do so, a paying bank that cannot identify the depository bank from the check itself may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.

c. A bank must identify an item of information if the bank is uncertain as to that item's accuracy. A bank may make this identification in accordance with general industry practices, or by other reasonable means. For example, where the paying bank receives a handwritten check with a payee name that the paying bank cannot decipher using a good faith effort, the paying bank could include a "?" symbol in the payee's name field of the notice to indicate its uncertainty as to that particular element.

~~3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See~~

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~~§229.39.) If payment cannot be obtained from a depository or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under §229.35(b).~~

~~4. This paragraph affects U.C.C. 4-214(a) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under §229.36(d), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the U.C.C.~~

~~D. 229.31(d) Charges-Exceptions to the expeditious return of checks and notice of nonpayment~~

~~1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under §229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.~~

~~1. Depository banks not subject to subpart B of this part.~~

~~a. Subpart B of this part applies only to “checks” deposited in transaction “accounts.” A depository bank with only time or savings accounts or credit card accounts need not comply with the availability requirements of subpart B of Regulation CC. Thus, the expeditious return requirement of § 229.31(b) and the notice of nonpayment requirement of § 229.31(c) do not apply to checks being returned to banks that do not hold accounts. The paying bank’s midnight deadline in UCC 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12), and the extension in § 229.31(g), would continue to apply to these checks.~~

~~b. The expeditious return requirement and the notice of nonpayment requirement apply only to “checks” deposited in a bank that is a “depository institution” under the EFA Act. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not “depository institutions” within the meaning of the EFA Act and therefore are not subject to the expedited-availability requirements of subpart B of this regulation. Thus, the expeditious return and notice of nonpayment requirements of this section would not apply to a paying bank returning a check that was deposited in one of these banks.~~

~~2. Unidentifiable depository banks~~

~~a. A paying bank that sends a check to a bank that handled the check for forward collection because the paying bank is unable to identify the depository bank is not~~

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subject to the requirement for expeditious return by the paying bank or to the requirement for notice of nonpayment. Although the lack of requirement for notice of nonpayment under this paragraph will create risks for the depository bank, the inability to identify the depository bank will generally be due to the depository bank's, or a collecting bank's, failure to indorse as required by § 229.35(a). If the depository bank failed to use the proper indorsement, it should bear the risks of less- than- expeditious return or not receiving notice of nonpayment in a timely manner. Similarly, where the inability to identify the depository bank is due to indorsements or other information placed on the back of the check by the depository bank's customer or other prior indorser, the depository bank should bear the risk that it cannot charge a returned check back to that customer.

b. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return or not providing notice of nonpayment in cases where the paying bank is itself responsible for the inability to identify the depository bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depository bank's indorsement, and the depository bank placed its indorsement on the original check making the indorsement unreadable. (See § 229.38(c)).

c. A paying bank's return of a check to an unidentifiable depository bank is subject to its midnight deadline under UCC 4-301, Regulation J (if the check is returned through a Federal Reserve Bank), and the extension provided in § 229.31(g).

E. 229.31(e) ~~Depository Bank Without Accounts~~ Identification of Returned Check

~~1. This paragraph is similar to §229.30(e) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not maintain any accounts. (See the Commentary to §229.30(e).)~~

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as "Refer to Maker" may be appropriate in certain cases, such as when a drawer with a positive pay arrangement instructs the bank to return the check. By contrast, a reason such as "Refer to Maker" would be inappropriate in cases where a check is being returned due to the paying bank having already paid the item, where a check has been altered, or where a check is unauthorized. In such cases, the payee and not the drawer would generally have more information as to why the check is being returned.

2. If the returned check is a substitute check or electronic returned check, the reason for return information must be included such that it is retained on any subsequent substitute check. For substitute checks, this requirement could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100-140 or (2) within the image of the original check that appears on the front of the substitute check so



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that the information is retained on any subsequent substitute check. For electronic returned checks, this requirement could be met by including the reason for return in accordance with ANS X9.100-187. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

F. 229.31(f) Notice in Lieu of Return

1. This paragraph is similar to §229.30(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or must retain possession of the check for protest) and does not have sufficient information to create a substitute check. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. (See the Commentary to §229.30(f).) For example, a bank that does not have the original check may have an image of both sides of the check, but the image may be insufficient or may not be in the proper format such that the bank cannot create a substitute check or provide required substitute check warranties. In that case, the check would be unavailable for return. A bank using a notice in lieu of return gives a warranty under § 229.34(d)(1)(iv) that the check, in any form, has not been and will not be returned.

2. A notice in lieu of return must be in writing (either in paper form, or if agreed to by the parties electronic form), but not provided by telephone or other oral transmission. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that any returning bank and the depository bank are informed that the notice carries value. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.31(c)(2). The copy or written notice must clearly indicate it is a notice in lieu of return. Notice by a legible facsimile of both sides of the check may satisfy the requirements for a notice in lieu of return. The paying bank may send an electronic image of both sides of the check as a notice in lieu of return only if it has an agreement to do so with the receiving bank. (See § 229.30(b)).

3. The requirement of this paragraph supersedes the requirement of UCC 4-301(a) as to the form and information required of a notice of dishonor or nonpayment.

4. The notice in lieu of return is subject to the provisions of this subpart relating to returned checks and is treated like a returned check for purposes of this subpart. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

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5. If not all of the information required by § 229.31(c)(2) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

G. 229.31(g) ~~Reliance on Routing Number~~ Extension of Deadline

~~1. This paragraph is similar to §229.30(g) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depository bank's indorsement or on qualified returned checks. (See the Commentary to §229.30(g).)~~

1. This paragraph permits extension of the deadlines in the UCC, Regulation J (12 CFR part 210), and § 229.36(d)(3) and (4) for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210), or § 229.36(d)(3) or (4)), in two circumstances:

a. A paying bank may, by agreement, send an electronic returned check instead of a paper returned check or may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the depository bank (or receiving bank, if the depository bank is unidentifiable) on or before the depository bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking... day or a cutoff hour of 2 p.m. (local time of the depository bank or receiving bank) or later set by the depository bank (or receiving bank) under UCC 4-108. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see the following paragraph).

b. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have its back-office operations staff available on Saturday to prepare and send the electronic returned checks, and the returning bank or depository bank that would be receiving this electronic information may not have staff available to process it until Sunday night or Monday morning. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank (or receiving bank) by



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the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in UCC 4-301 and 4-302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(d)(3) and (4).

3. If the paying bank has an agreement to do so with the receiving bank (such as through bilateral agreements, clearinghouse rules, or operating circular), the paying bank may satisfy its midnight or other return deadline by sending an electronic returned check prior to the expiration of the deadline. The time when the electronic returned check is considered to be received by the depository bank is determined by the agreement. The paying bank satisfies its midnight or other return deadline by dispatching paper returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects UCC 4-301 and 4-302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

H. 229.31(h) Payable Through and Payable at Checks

1. For purposes of subpart C of this part, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of subpart C are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks and receipt of notices of nonpayment for checks that are payable through or at a bank to the depository bank.

2. A check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4-301.

I. 229.31(i) Reliance on Routing Number

1. Although § 229.35 requires that the depository bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depository bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depository bank as it appears on the check (in the depository bank's indorsement) or in the electronic check sent pursuant to an agreement when the check, or electronic check, is received by the paying bank.



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2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depository bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

XVIII. Section 229.32 ~~Depository-Returning~~ Bank's Responsibility for Returned Checks

A. 229.32(a) ~~Acceptance of Returned~~ Return of Checks

~~1. This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depository banks with no preexisting arrangements as to where the returned checks should be delivered. This paragraph states where the depository bank is required to accept returned checks and written notices of nonpayment under §229.33. (These locations differ from locations at which a depository bank must accept electronic notices.) It is derived from U.C.C. 3-111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.~~

1. Routing of returned check.

a. Under § 229.32(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depository bank by sending an electronic returned check directly to the depository bank if the returning bank has an agreement with the depository bank to do so, or by using a courier or other means of delivery; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depository bank, it is not required to send the check to the branch of the depository bank that first handled the check. A paper returned check may be sent to the depository bank at any physical location permitted under § 229.33(b).

~~2. The paragraph specifies four locations at which the depository bank must accept returned checks:~~

~~a. The depository bank must accept returned checks at any location at which it requests presentment of forward collection checks such as a processing center. A~~

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~~depository bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.~~

~~b. i. If the depository bank indorsement states the name and address of the depository bank, it must accept returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depository bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned checks.~~

~~ii. If no address appears in the depository bank's indorsement, the depository bank must accept returned checks at any branch or head office associated with the depository bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number.~~

~~iii. The depository bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check processing region. Under §§229.30(g) and 229.31(g), a paying or returning bank may rely on the depository bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depository bank's indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.~~

~~iv. If no routing number or address appears in its indorsement, the depository bank must accept a returned check at any branch or head office of the bank. The indorsement requirement of §229.35 and appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depository bank has failed to comply with the indorsement requirement.~~

2. Unidentifiable depository bank.

a. Returning banks agreeing to handle checks for return to depository banks under § 229.32(a) are expected to be expert in identifying depository bank indorsements. In the limited cases where the returning bank cannot identify the depository bank, if the returning bank did not handle the check for forward collection, it may send the returned check to any collecting bank that handled the check for forward collection.

b. If, on the other hand, the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depository bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depository bank.

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c. The returning bank's return of a check under this paragraph is subject to the requirement to use ordinary care under UCC 4-202(b). (See definition of returning bank in § 229.2(cc)).

d. As in the case of a paying bank returning a check under § 229.31(a)(2), a returning bank returning a check under § 229.32(a)(2) must advise the bank to which it sends the returned check that it is unable to identify the depository bank. This advice must be conspicuous, such as a stamp on the check or a notice on the cash letter. The returned check may not be prepared as a qualified return. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties.

~~3. For ease of processing, a depository bank may require that returning or paying banks returning checks to it separate returned checks from forward collection checks being presented.~~

3. A returning bank agrees to handle a returned check if it—

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection;

c. Agrees with the paying bank or returning bank to handle electronic returned checks sent by that bank; or

d. Otherwise agrees to handle a returned check.

~~4. Under §229.33(d), a depository bank receiving a returned check or notice of nonpayment must send notice to its customer by its midnight deadline or within a longer reasonable time.~~

4. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but, unless the sending bank and returning bank agree otherwise, the cut-off hour for returned checks may not be earlier than 2 p.m. (local time of the returning bank). The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks.

5. Qualified returned checks. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. The qualified returned check must include the routing number of the depository bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified

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returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(c)(3) for breach of an encoding warranty.

6. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depository bank. (See UCC 4–202(c) regarding the responsibility of collecting banks).

7. UCC sections affected. Section 229.32 directly affects UCC Section 4-214(a) and may affect other sections or provisions. (See UCC 4-202(b)). Section 4–214(a) is affected in that settlement for returned checks is made under § 229.32(e) and not by charge-back of provisional credit.

B. 229.32(b) Payment-Expeditious Return of Checks

~~1. As discussed in the commentary to §229.31(c), under this regulation a paying or returning bank does not obtain credit for a returned check by charge-back but by, in effect, presenting the returned check to the depository bank. This paragraph imposes an obligation to “pay” a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the returning bank.~~

1. The standards for return of checks established by this section are similar to those for paying banks in § 229.31(b). This section requires a returning bank to return a returned check expeditiously, subject to the exceptions set forth in § 229.32(c). In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depository bank for the purposes of returning the check.

~~2. The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. 4-108, which permits the bank to establish a cut-off hour, generally not earlier than 2:00 p.m., and treat checks received after that hour as being received on the next banking day. If the depository bank is unable to make payment to a returning or paying bank on the banking day that it receives the returned check, because the returning or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.~~

2. A returning bank that agrees to handle a returned check (see commentary to § 229.32(a)) is subject to the expeditious return requirement with respect to the returned check except as provided in § 229.32(c)).

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~~3. Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer of funds to the returning or paying bank on the day it receives the returned check, even if the returning or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.~~

~~3. *Two-day test.* As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it is sent in a manner such that the depository bank would normally receive the returned check by 2 p.m. (local time of the depository bank) of the second business day after the banking day on which the check was presented to the paying bank. Although a returning bank will not have firsthand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. Paying banks and returning banks are subject to the expeditious return rule, however, under section 229.33(a) a paying or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner only if the depository bank has arrangements in place such that the paying bank or returning bank could return a returned check to the depository bank electronically by commercially reasonable means. The depository bank has the burden of proof for demonstrating that its arrangements are commercially reasonable.~~

~~4. The depository bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.~~

~~4. *Example.* Returning Bank A does not have an agreement to send electronic returned checks to the depository bank but has an agreement to send electronic returned checks to Returning Bank B, which, in turn, has an agreement to send electronic returned checks to the depository bank. If a check is presented to the paying bank on Monday, each returning bank would need to send the returned check in a manner such that the depository bank normally would receive the returned check by 2 p.m. (local time of the depository bank) on Wednesday.~~

~~5. The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.~~

~~6. This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§229.19(c)(2)(ii), 229.33(d) and 229.35(b).)~~

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C. 229.32(c) ~~Misrouted-Returned-Exceptions to the Expeditious Return of Checks~~

~~1. This paragraph permits a bank receiving a check on the basis that it is the depository bank to send the misrouted returned check to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check expeditiously under §229.30(a). In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depository bank would be required to pay for the returned check under §229.32(b), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under §229.31(c). If the check was originally received “free,” that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of §229.31(a); however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under §229.35(b).~~

1. This paragraph sets forth the circumstances under which a returning bank is not required to return the check to the depository bank in accordance with § 229.32(b).

2. Depository bank not subject to subpart B. This paragraph is similar to § 229.31(d)(1) and relieves a returning bank of its obligation to make expeditious return to a depository bank that does not hold “accounts” under subpart B of this regulation or is not a “depository institution” within the meaning of the EFA Act. (See commentary to § 229.31(d)).

3. Unidentifiable depository bank. A returning bank is not subject to the expeditious return requirements of § 229.32(b) in handling a returned check for which the paying bank cannot identify the depository bank.

4. Misrouted returned check. A returning bank is not subject to the expeditious return requirements of § 229.32(b) in handling a misrouted returned check pursuant to § 229.33(f). A bank acting as a returning bank because it received a returned check on the basis that it was the depository bank and sends the misrouted returned check to the correct depository bank, directly or through subsequent returning banks, is similarly not subject to the expeditious return requirements of § 229.32(b). (See commentary to § 229.33(f)).

D. 229.32(d) ~~Charges-Notice in Lieu of Return~~

~~1. This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a~~

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~~sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.~~

~~1. This paragraph is similar to § 229.31(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or when the bank must retain possession of the check for protest) and does not have sufficient information to create a substitute check. (See commentary to § 229.31(f)).~~

E. 229.32(e) Settlement

~~1. Under the UCC, a paying bank settles with a presenting bank after the check is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depository bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.~~

~~2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(c) and commentary to § 229.35(b)).~~

~~3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See § 229.39). If payment cannot be obtained from a depository bank or returning bank because of its insolvency or otherwise, recovery can be had by returning banks, paying banks, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).~~

~~4. This paragraph affects UCC 4-214(a) in that a paying bank or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under § 229.36(c), a bank collecting a check remains liable to prior collecting banks and the depository bank's customer under the UCC.~~

F. 229.32(f) Charges



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1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

G. 229.32(g) Reliance on Routing Number

1. This paragraph is similar to § 229.31(i) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depository bank's indorsement, or in the electronic returned check received by the returning bank pursuant to an agreement, or on qualified returned checks. (See commentary to § 229.31(i)).

XIX. Section 229.33 *Depository Bank's Responsibility for Returned Checks and Notices of Nonpayment*

A. 229.33(a) *Requirement Right to assert claim*

~~1. Notice of nonpayment as required by this section and written notice in lieu of return as provided in §§229.30(f) and 229.31(f) serve different functions. The two kinds of notice, however, must meet the content requirements of this section. The paying bank must send a notice of nonpayment if it decides not to pay a check of \$2,500 or more. A paying bank may rely on an amount encoded on the check in magnetic ink to determine whether the check is in the amount of \$2,500 or more. The notice of nonpayment carries no value, and the check itself (or the notice in lieu of return) must be returned. The paying bank must ensure that the notice of nonpayment is received by the depository bank by 4:00 p.m. local time on the second business day following presentment. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to create a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See Commentary to the definition of paying bank in §229.2(z).)~~

1. This paragraph sets forth the circumstances under which a paying bank or returning bank may be liable to a depository bank for failing to return a check in an expeditious manner in accordance with §§ 229.31(b) and 229.32(b) respectively.



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~~2. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under §229.34(b), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depository bank that the check has been paid.~~

2. This paragraph does not require a depository bank to establish arrangements to accept returned checks electronically, either directly from the paying bank or indirectly from a returning bank. Most depository banks, however, have arrangements in place to accept returned checks electronically. (See commentary to §§ 229.31(b) and 229.32(b) for examples of direct and indirect arrangements).

~~3. Because the return of the check itself may serve as the required notice of nonpayment, in many cases no notice other than the return of the check will be necessary. For example, in many cases the return of a check through a clearinghouse to another participant of the clearinghouse will be made in time to meet the time requirements of this section. If the check normally will not be received by the depository bank within the time limits for notice, the return of the check will not satisfy the notice requirement. In determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depository bank, unless the paying bank has reason to know the availability schedules are inaccurate.~~

3. The depository bank has the burden of proof for demonstrating that its arrangements for accepting returned checks electronically are commercially reasonable. The standard allows for case-by-case flexibility and can change over time to reflect market practices. The standard is intended to prevent a depository bank from establishing electronic return arrangements that are very limited in scope or that provide unreasonable barriers to return such that, in practice, the depository bank would accept only a small proportion of its returns electronically.

~~4. Unless the returned check is used to satisfy the notice requirement, the requirement for notice is independent of and does not affect the requirements for timely and expeditious return of the check under §229.30 and the U.C.C. (See §229.30(a).) If a paying bank fails both to comply with this section and to comply with the requirements for timely and expeditious return under §229.30 and the U.C.C. and Regulation J (12 CFR part 210), the paying bank shall be liable under either this section or such other requirements, but not both. (See §229.38(b).) A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under U.C.C. 4-208, notwithstanding that the paying bank may have returned the check. (See U.C.C. 4-208 and 4-302.)~~



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B. 229.33(b) ~~Content of Notices-Acceptance of Electronic Returned Checks and Electronic Notices of Nonpayment~~

~~1. This paragraph provides that the notice must at a minimum contain eight elements which are specifically enumerated. In the case of written notices, the name and routing number of the depository bank also are required.~~

1. A depository bank may agree directly with a returning bank or a paying bank (or through clearinghouse rules) to accept electronic returned checks. Likewise, a depository bank may agree directly with a paying bank (or through clearinghouse rules) to accept electronic written notices of nonpayment. (See §§ 229.2(ggg), 229.30(b), and 229.31(c) and commentary thereto). The depository bank's acceptance of electronic returned checks and electronic written notices of nonpayment is governed by the depository bank's agreement with the banks sending the electronic returned check or electronic written notice of nonpayment to the depository bank (or through the applicable clearinghouse rules). The agreement normally would specify the electronic address or receipt point at which the depository bank accepts returned checks and written notices of nonpayment electronically, as well as what constitutes receipt of the returned checks and written notices of nonpayment. The agreement also may specify whether electronic returned checks must be separated from electronic checks sent for forward collection.

~~2. If the paying bank cannot identify the depository bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depository bank. The collecting bank may be able to identify the depository bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depository bank.~~

~~3. A bank must identify an item of information if the bank is uncertain as to that item's accuracy. A bank may make this identification by setting the item off with question marks, asterisks, or other symbols designated for this purpose by generally applicable industry standards.~~

C. 229.33(c) ~~Acceptance of Paper Returned Checks and Paper Notices of Nonpayment~~

~~1. In the case of a written notice, the depository bank is required to accept notices at the locations specified in §229.32(a). In the case of telephone notices, the bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device. Banks may vary by agreement the location and manner in which notices are received.~~

1. This paragraph states where the depository bank is required to accept paper returned checks and paper notices of nonpayment during its banking day. (These locations differ from locations at which a depository bank must accept oral notices or electronic notices. (See § 229.33(b) and (d) and commentary thereto). This paragraph is derived from UCC 3-111, which specifies that presentment for payment may be made at the place

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specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depository bank does not print the check and can only specify the place of “payment” of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depository bank must accept paper returned checks and paper notices of nonpayment:

a. The depository bank must accept paper returned checks and paper notices of nonpayment at any location at which it requests presentment of forward collection paper checks, such as a processing center. A depository bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b.

i. If the depository bank indorsement states the name and address of the depository bank, it must accept paper returned checks and paper notices of nonpayment at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depository bank must accept paper returned checks and paper notices of nonpayment at any branch or head office consistent with the address. If, for example, the address is “New York, New York,” each branch in New York City must accept paper returned checks and paper notices of nonpayment. Accordingly, a depository bank may limit the locations at which it must accept paper returned checks and paper notices of nonpayment by specifying a branch or head office in its indorsement.

ii. If no address appears in the depository bank’s indorsement, the depository bank must accept paper returned checks and paper notices of nonpayment at any branch or head office associated with the depository bank’s routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

iii. If no routing number or address appears in its indorsement, the depository bank must accept a paper returned check at any branch or head office of the bank. Section 229.35 and applicable industry standards require that the indorsement contain a routing number, a name, and a location. Consequently paragraphs (c)(1)(ii)(B) and (C) of this section apply only where the depository bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depository bank may require that returning banks or paying banks returning checks to it separate returned checks from forward collection checks being presented.



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D. 229.33(d) *Acceptance Oral Notices of Nonpayment*

~~1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment, regardless of the amount of the check or notice. This requirement is similar to the requirement under the U.C.C. as interpreted in *Appliance Buyers Credit Corp. v. Prospect National Bank*, 708 F.2d 290 (7th Cir. 1983), that a depository bank may be liable for damages incurred by its customer for its failure to give its customer timely advice that it has received a notice of nonpayment. Notice also must be given if a depository bank receives a notice of recovery under §229.35(b). A bank that chooses to provide the notice required by §229.33(d) in writing may send the notice by e-mail or facsimile if the bank sends the notice to the e-mail address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of §229.13(g) if the depository bank invokes the reasonable-cause exception of §229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets all the requirements of §229.13(g).~~

~~In the case of telephone notices, the depository bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device.~~

E. 229.33(e) *Payment*

~~1. As discussed in the commentary to § 229.32(e), under this regulation a paying bank or returning bank does not obtain credit for a returned check by charge-back but by, in effect, “presenting” the returned check to the depository bank. This paragraph imposes an obligation to “pay” a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depository bank may not return a returned check for which it is the depository bank. Also, certain means of payment, such as remittance drafts, may be used only by agreement.~~

~~2. The depository bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4-108, which permits the bank to establish a cut-off hour, generally not earlier than 2 p.m. (local time of the depository bank), and treat checks received after that hour as being received on the next banking day. If the depository bank is unable to make payment to a returning bank or paying bank on the banking day that it receives the returned check, because the returning bank or paying bank is closed for a holiday or because the time when the depository bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.~~

~~3. Payment must be made so that the funds are available for use by the bank returning the check to the depository bank on the day the check is received by the depository bank. For example, a depository bank meets this requirement if it sends a wire transfer to the returning bank or paying bank on the day it receives the returned check, even~~



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if the returning bank or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depository bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depository bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning bank or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depository bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(h), and 229.35(b)).

F. 229.33(f) Misrouted Returned Checks and Written Notices of Nonpayment

1. This paragraph permits a bank receiving a check or written notice of nonpayment (either in paper form or electronic form) on the basis that it is the depository bank to send the misrouted returned check or written notice of nonpayment to the correct depository bank, if it can identify the correct depository bank, either directly or through a returning bank agreeing to handle the check or written notice of nonpayment. When sending a returned check under this paragraph, the bank receiving the misrouted check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check or written notice of nonpayment must send the check or notice back to the bank from which it was received.

2. In sending a misrouted returned check, the bank to which the returned check was misrouted (the incorrect depository bank) could receive settlement from the bank to which it sends the misrouted check under § 229.33(f) (the correct depository bank, a returning bank that agrees to handle it, or the bank from which the misrouted check was received). The correct depository bank would be required to pay for the returned check under § 229.33(e), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.32(e). The bank to which the returned check was misrouted is required to act promptly, i.e., within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

G. 229.33(g) Charges

1. This paragraph prohibits a depository bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for

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handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depository bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depository bank, however, no fee may be charged.

H. 229.33(h) Notification to Customer

1. This paragraph requires a depository bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment. Notice also must be given if a depository bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.33(h) in writing may send the notice by email or facsimile if the bank sends the notice to the email address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depository bank invokes the reasonable-cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets all the requirements of § 229.13(g).

XX. Section 229.34 Warranties and Indemnities

A. 229.34(a) Warranty of Returned Check-Introduction

~~1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty), Regulation J (12 CFR part 210), or §229.30(e); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. (See the Commentary to §229.30(f).) The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See §229.42.)~~

1. Unless otherwise specified, warranties that apply to checks or returned checks also apply to electronic checks and electronic returned checks, including under paragraphs (b) (transfer and presentment warranties with respect to remotely created checks), (c) (settlement amount, encoding, and offset warranties), (d) (returned check warranties), and (e) (notice of nonpayment warranties). (See § 229.30(a) and commentary thereto). Paragraph (f), however, sets forth remote deposit capture indemnities provided to banks that accept an original check for deposit for losses incurred by that depository bank if the loss is due to the check having already been paid. Paragraph (a) sets forth warranties that

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are given only with respect to electronic checks and electronic returned checks. Paragraph (g) sets forth indemnities with respect to electronically created items.

B. 229.34(ba) Warranty of Notice of Nonpayment Warranties With Respect to Electronic Checks and Electronic Returned Checks

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under §229.33. The requirements of §229.33 that are not covered by the warranty are subject to the liability provisions of §229.38. These warranties are designed to give the depository bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See Commentary on §229.33(a).)

1. Paragraph (a) of § 229.34 sets forth the warranties that a bank makes when transferring or presenting an electronic check or electronic returned check and receiving settlement or other consideration for it. Electronic checks and electronic returned checks sent pursuant to an agreement with the receiving bank are treated as checks subject to subpart C. Therefore, the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (b), (c), (d), and (e) with respect to an electronic check or electronic returned check. For example, a bank that transfers and receives consideration for an electronic check that is derived from a remotely created check warrants that the remotely created check, from which the electronic check is derived, is authorized by the person on whose account the check is drawn.

2. The warranties in § 229.34(a)(1) relate to a subsequent bank's ability to create a substitute check. This paragraph provides a bank that creates a substitute check from an electronic check or electronic returned check with a warranty claim against any prior bank that transferred the electronic check or electronic returned check. The warranties in this paragraph correspond to the warranties made by a bank that transfers, presents, or returns a substitute check (a paper or electronic representation of a substitute check) for which it receives consideration. (See § 229.52 and commentary thereto). A bank that transfers an electronic check or electronic returned check that is an electronic representation of a substitute check also makes the warranties and indemnities in §§ 229.52 and 229.53.

3. By agreement, a sending and receiving bank may vary the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks, for example, to provide that the bank transferring the check does not warrant that the electronic image or information is sufficient for creating a substitute check. (See § 229.37(a)). The variation by agreement, however, would not affect the rights of banks and persons that are not bound by the agreement.

C. 229.34(b) Transfer and Presentment Warranties with Respect to a Remotely Created Check



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1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depository bank. The depository bank cannot assert the transfer and presentment warranties against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person. The Federal Trade Commission's Telemarketing Sales Rule (16 CFR Part 310) contains further regulatory provisions regarding remotely created checks.

2. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding UCC warranty provisions in two respects. The UCC warranties are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under § 229.34(b). In addition, the UCC warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The § 229.34(b) warranties specifically cover the amount as well as the payee stated on the check. Neither the UCC warranties, nor the § 229.34(b) warranties, apply to the date stated on the remotely created check.

3. A bank making the § 229.34(b) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by UCC 4-406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

4. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been converted to an electronic check or reconverted to a substitute check.

~~CD. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset Warranties~~

1. Paragraph (c)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter or in the electronic cash letter file) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under U.C.C. 4-301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting, returning, or depository bank, the transferor bank is not required to demand settlement, as is required



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upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing or cash letter control record) that will indicate the total of the checks or returned checks. Paragraph (c)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (c)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of the ~~magnetic ink encoding that was placed on the item~~ information encoded regarding the check after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Paragraph (c)(3) applies to all MICR-line encoding on a paper check, substitute check, or contained in an electronic check or electronic returned check. Under U.C.C. 4-209(a), only the encoder (or the encoder and the depository bank, if the encoder is a customer of the depository bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (c)(3) expands on the U.C.C. by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the U.C.C., the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (c)(3) provides that the warranty is made to banks in the return chain as well. ~~Paragraph (c)(3) applies to all MICR-line encoding on a substitute check.~~

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (c)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (c)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (c)(4) provides that a paying bank or a depository bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depository bank) subsequent to the excess settlement.

~~DE. 229.34(d) Transfer and Presentment Returned Check Warranties~~

~~1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depository bank. The depository bank cannot assert the transfer and presentment warranties against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.~~

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~~1. This paragraph includes warranties that a returned check, including a notice in lieu of return or an electronic returned check, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC (subject to any claims or defenses under the UCC, such as breach of a presentment warranty) or § 229.31(g); that the paying bank or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the check has not been and will not be returned for payment. (See commentary to § 229.31(f)). The warranty does not include a warranty that the bank complied with the expeditious return requirements of § 229.31(b) and 32(b). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42).~~

~~2. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's "express verifiable authorization" (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3). The transfer and presentment warranties shift liability to the depository bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences "buyer's remorse" and subsequently tries to revoke the authorization by asserting a claim against the paying bank under U.C.C. 4-401. If the depository bank suspects "buyer's remorse," it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer, required under the Federal Trade Commission's Telemarketing Sales Rule, and use that authorization as a defense to the warranty claim.~~

~~3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding U.C.C. warranty provisions in two respects. The U.C.C. warranties differ from the §229.34(d) warranties in that they are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under §229.34(d). In addition, the U.C.C. warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The §229.34(d) warranties specifically cover the amount as well as the payee stated on the check. Neither the U.C.C. warranties, nor the §229.34(d) warranties apply to the date stated on the remotely created check.~~

~~4. A bank making the §229.34(d) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by U.C.C. 4-406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.~~

~~5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been reconverted to a substitute check.~~

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F. 229.34(e) Notice of Nonpayment Warranties

1. This paragraph sets forth warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.31(c). The requirements of § 229.31(c) that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to protect depository banks that rely on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently does not return the check. (See commentary to § 229.31(c)).

G. 229.34(f) Remote Deposit Capture Indemnity

1. This indemnity provides for a depository bank's potential liability when it permits a customer to deposit checks by remote deposit capture (i.e., to truncate checks and deposit an electronic image of the original check instead of the original check). Because the depository bank's customer retains the original check, that customer might, intentionally or mistakenly, deposit the original check in another depository bank. The depository bank that accepts the original check, in turn, may make funds available to the customer before it learns that the check is being returned unpaid and, in some cases, may be unable to recover the funds from its customer. Section 229.34(f) provides the depository bank that accepts the original check for deposit with a claim against the depository bank that did not receive the original check because it permitted its customer to truncate it, received settlement or other consideration for the check, and did not receive a return of the check unpaid. This claim exists only if the check is returned to the depository bank that accepted the original check due to the fact that the check had already been paid.

2. Examples.

a. Depository Bank A offers its customers a remote deposit capture service that permits customers to take pictures of the front and back of their checks and send the image to the bank for deposit. Depository Bank A accepts an image of the check from its customer and sends an electronic check for collection to Paying Bank. Paying Bank, in turn, pays the check. Depository Bank A receives settlement for the check. The same customer who sent Depository Bank A the electronic image of the check then deposits the original check in Depository Bank B. There is no restrictive indorsement on the check. Depository Bank B sends the original check (or a substitute check or electronic check) for collection and makes funds from the deposited check available to its customer. The customer withdraws the funds. Paying Bank returns the check to Depository Bank B indicating that the check already had been paid. Depository Bank B may be unable to charge back funds from its customer's account. Depository Bank B may make an indemnity claim against Depository Bank A for the amount of the funds Depository Bank B is unable to recover from its customer.

b. The facts are the same as above with respect to Depository Bank A and B; however, the original check deposited in Depository Bank B bears a restrictive

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indorsement “for mobile deposit at Depository Bank A only” and the customer’s account number at Depository Bank A. Depository Bank B may not make an indemnity claim against Depository Bank A because Depository Bank B accepted the original check bearing a restrictive indorsement inconsistent with the means of deposit.

c. The facts are the same as above with respect to Depository Bank A; however, Depository Bank B also offers a remote deposit capture service to its customer. The customer uses Depository Bank B’s remote deposit capture service to send an electronic image of the front and back of the check, after sending the same image to Depository Bank A. The customer deposits the original check into Depository Bank C without a restrictive indorsement. Paying Bank pays the check based on the image presented by Depository Bank A, and Depository Bank A receives settlement for the check without the check being returned unpaid to it. Paying Bank returns the checks presented by Depository Bank B and Depository Bank C. Neither Depository Bank B nor Depository Bank C can recover the funds from the deposited check from the customer. Depository Bank B does not have an indemnity claim against Depository Bank A because Depository Bank B did not receive the original check for deposit. Depository Bank C, however, would be able to bring an indemnity claim against Depository Bank A. 3. A depository bank may, by agreement, allocate liability for loss incurred from subsequent deposit of the original check to its customer that sent the electronic check related to the original check to the depository bank.

H. 229.34(g) Indemnities With Respect to Electronically-Created Items

1. As a practical matter a bank receiving an electronic image generally cannot distinguish an image that is derived from a paper check from an electronically-created item. Nonetheless, the bank receiving the electronically-created item often handles the electronically-created image as if it were derived from a paper check.

2. Paragraph (g) of § 229.34 sets forth the indemnities that a bank provides when transferring or presenting an electronically-created item and receiving settlement or other consideration for it. The indemnities set forth in § 229.34(g) are provided only by banks and only to subsequent banks in the collection chain. The indemnities ultimately shift liability for losses to the depository bank due to the fact the electronically created item is not derived from a paper check, was unauthorized, or was transferred or presented for payment more than once. (See § 229.34(i) and commentary thereto). The depository bank cannot assert the indemnities set forth in § 229.34(g) against a depositor. However, a depository bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The paying bank’s losses in paragraph (g)(1) of this section include losses arising from Regulation E non-compliance caused by the receipt of an electronically-created item.



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3. Under paragraphs (g)(2) and (3), indemnified banks have a claim for damages pursuant to § 229.34(i) regardless of whether the damages would have occurred if the item transferred had been derived from a paper check.

3. Examples.

a. A paying bank pays an electronically-created item, which the paying bank's customer subsequently claims is unauthorized. The paying bank may incur liability on the item due to the fact the item is electronically created and not derived from a paper check. For example, the paying bank may have no means of disputing the customer's claim without examining the physical check, which does not exist. The indemnity in § 229.34(g) enables the paying bank to recover from the presenting bank or any prior transferor bank for the amount of its loss, as permitted under § 229.34(i), due to receiving the electronically-created item.

b. A bank receives an electronic image of and electronic information related to an electronically-created item and, in turn, produces a paper item that is indistinguishable from a substitute check. The paper item is not a substitute check because the item is not derived from an original, paper check. That bank may incur a loss because it cannot produce the legal equivalent of a check (See § 229.53 and commentary thereto). The indemnity in § 229.34(g) enables a bank that received the electronically-created item to recover from the bank sending the check for the amount of the loss permitted under § 229.34(i).

c. A paying bank is not required by § 229.31(b) to return an electronically-created item expeditiously. The depository bank incurs a loss because it receives the return of the electronically-created item unexpeditiously and is unable to recover funds previously made available to its customer. The depository bank is not an indemnified party under § 229.34(g) and therefore cannot recover its loss pursuant to that indemnity.

E]. 229.34(dh) Damages

1. This paragraph adopts for the warranties in §229.34 (a), (b), ~~and (c)~~, (d), and (e) the damages provided in U.C.C. 4-207(c) and 4A-506(b). (See definition of interest compensation in §229.2(oo).)

J. 229.34(i) Indemnity Amounts

1. This paragraph adopts for the amount of the indemnities provided for in § 229.34(f)(2) and (g) an amount comparable to the damages provided in § 229.53(b)(1)(ii) of subpart D of this regulation.

2. The amount of an indemnity would be reduced in proportion to the amount of any loss attributable to the indemnified person's negligence or bad faith. This comparative-

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negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of § 229.38(c).

3. An indemnified bank may be able to make an indemnity claim against more than one indemnifying depository bank. However, an indemnified bank may not recover in the aggregate across all indemnifying banks more than the amount described in this paragraph. Therefore, an indemnified bank that recovers the amount of its the loss from one indemnifying depository bank under this paragraph no longer has a loss that it can collect from a different indemnifying depository bank.

FK. 229.34(ej) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of U.C.C. 3-119.

GL. 229.34(fk) Notice of Claim

1. This paragraph adopts the notice provisions of U.C.C. sections 4-207(d) and 4-208(e) and applies them to this section's indemnities and warranties. The time limit set forth in this paragraph applies to notices of claims for warranty breaches only and for indemnities. As provided in §229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. Section 229.35 Indorsements

A. 229.35(a) Indorsement Standards

1. This section ~~and appendix D~~ requires banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. ~~The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depository bank indorsements.~~ It is designed to facilitate the identification of the depository bank and the prompt return of checks. ~~The regulation places a duty on banks to ensure that their indorsements can be interpreted by any person. The indorsement standard specifies the information each indorsement must contain and its location and ink color.~~ The indorsement standard a bank must use depends on the type of check being indorsed. Paper checks must be indorsed in accordance with ANS X9.100-111. Substitute checks must be indorsed in accordance with ANS X9.100-140. Electronic checks must be indorsed in accordance ANS X9.100-187. The Board, however, may by rule or order determine that different standards apply.

2. The parties sending and receiving a check may agree that different indorsement standards will apply to such checks. For example, although ANS X9.100-187 is an industry standard for banks' exchange of electronic checks, the parties may agree to send and receive electronic checks that conform to a different standard.

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~~23. Banks generally apply indorsements to a paper check in one of two ways: (1) in accordance with ANS X9.100-111, banks print or “spray” indorsements onto a check when the check is processed through the banks’ automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) in accordance with ANS X9.100-140, reconverting banks print or “overlay” previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute check is created in the course of collection or return, that substitute check will contain, in its image of the back of the previous substitute check, reproductions of indorsements that were sprayed or overlaid onto the previous item. For purposes of the indorsement standard set forth in appendix D, a reproduction of a previously applied sprayed or overlaid indorsement contained within an image of a check does not constitute “an indorsement that previously was applied electronically.” To accommodate these two indorsement scenarios, the appendix includes two indorsement location specifications: one standard applies to banks spraying indorsements onto existing paper original checks and substitute checks, and another applies to reconverting banks overlaying indorsements that previously were applied electronically and their own indorsements onto substitute checks at the time the substitute checks are created.~~

~~34. A bank might use check processing equipment that captures an image of a check prior to spraying an indorsement onto that item. If the bank truncates that item, it should ensure that it also applies an indorsement to the item electronically. A reconverting bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank's indorsement that previously was applied electronically onto a substitute check that the reconverting bank creates. (See commentary to § 229.51(b)).~~

~~4. The location of an indorsement applied to an original paper check in accordance with appendix D may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied to the original check in accordance with appendix D is overwritten by a subsequent indorsement applied to the substitute check in accordance with appendix D, then one or both of those indorsements could be rendered illegible. As explained in §229.38(d) and the commentary thereto, a reconverting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution.~~

~~5. To ensure that indorsements can be easily read and would remain legible after an image of a check is captured, the standard requires all indorsements applied to original checks and substitute checks to be printed in black ink as of January 1, 2006.~~

~~6. The standard requires the depository bank's indorsement to include (1) its nine-digit routing number set off by an arrow at each end of the routing number and, if the depository bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank; (2) the indorsement date; and (3) if the indorsement is applied physically, name or location information. The standard also permits but does not require the indorsement to include other identifying~~

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~~information. The standard requires a collecting bank's or returning bank's indorsement to include only (1) the bank's nine digit routing number (without arrows) and, if the collecting bank or returning bank is a reconvertng bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconvertng bank, (2) the indorsement date, and (3) an optional trace or sequence number.~~

~~7. Depository banks should not include information that can be confused with required information. For example, a nine digit zip code could be confused with the nine digit routing number.~~

~~85. A depository bank may want to include an address in its indorsement in order to limit the number of locations at which it must receive paper returned checks and paper notices of nonpayment. In instances where this address is not consistent with the routing number in the indorsement, the depository bank is required to receive returned checks at a branch or head office consistent with the routing number. Banks should note, however, that §229.323(c) requires a depository bank to receive paper returned checks at the location(s) at which it receives paper forward-collection checks, as well as the other locations enumerated in § 229.33(c). (See § 299.33(c) and commentary thereto).~~

~~9. In addition to indorsing a substitute check in accordance with appendix D, a reconvertng bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of the check in accordance with appendix D and ANS X9.100-140. Further, if the reconvertng bank is the paying bank, it also must identify itself by applying its routing number to the back of the check in accordance with appendix D. In these instances, the reconvertng bank and truncating bank routing numbers are for identification purposes only and are not indorsements or acceptances.~~

~~106. Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (See U.C.C. 4-207(a) and 4-208(a).) Use of guarantee language in indorsements of paper checks, such as "P.E.G." ("prior endorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depository bank. Subsequent collecting bank indorsements may not include this language.~~

~~117. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depository bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section § 229.35.~~

~~12. The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also,~~

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~~contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depository bank indorsement, thus making the depository bank indorsement unreadable.~~

~~13. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depository banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depository bank indorsement by staying clear of the area reserved for the depository bank indorsement.~~

~~14. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depository bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depository bank that made the depository bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depository and paying banks may shift these risks to their customers by agreement.~~

~~159. The standard does not require the A~~ paying bank is not required to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standards for collecting banks and returning banks. ~~The standard requires c~~ Collecting and returning banks are required to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a reconverting bank, see the commentary to § 229.51(b)(2).

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depository bank through any subsequent collecting banks to the paying bank. This ~~section-paragraph~~ extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depository bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first intermediary collecting bank that received the check from the depository bank. To avoid circuitry of actions, the returning bank could recover directly from

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the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depository bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depository bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depository bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability to a bank that subsequently handles the check and does not receive payment for the check is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank also may recover from a prior collecting bank as provided in §§ 229.301(ba) and 229.342(b) (in those cases where the paying bank is unable to identify the depository bank). ~~This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31(b).~~ This paragraph does not affect a paying bank's accountability for a check under U.C.C. 4-215(a) and 4-302. Nor does this paragraph affect a collecting bank's accountability under U.C.C. 4-213~~4~~ and 4-215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing U.C.C. sections. ~~The term f~~ Final settlement in §§ 229.342~~(ee)~~, 229.323~~(eb)~~, and 229.36~~(dc)~~ is intended to be consistent with ~~the use of the term~~ final settlement in the U.C.C. (e.g., U.C.C. 4-213, 4-214, and 4-215). (See also § 229.2(cc) (definition of returning bank) and Commentary thereto.)

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of the check for collection or return. A bank may become a holder or a holder

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in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a) ~~and appendix D.~~

7. This paragraph affects the following provisions of the U.C.C., and may affect other provisions depending on circumstance:

a. Section 4-214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4-214(a) would continue to permit a depository bank to recover a provisional settlement from its customer. (See § 229.33(dh).)

b. Section 3-415 and related provisions (such as section 3-503), in that such provisions would not apply as between banks, or as between the depository bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words “pay any bank,” as required by the U.C.C. (See U.C.C. 4-201(b).) Use of this language in a depository bank's indorsement will make it more difficult for other banks to identify the depository bank. The indorsement standard in appendix D applicable industry standard prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depository Bank

1. This section permits a depository bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depository bank. If the indorsing bank applies the depository bank's indorsement, checks will be returned to the depository bank. ~~If the indorsing bank does not apply the depository bank's indorsement,~~ An indorsing bank may by agreement with the depository bank ~~it may~~ apply its own indorsement as the depository bank indorsement. In that case, the actual depository bank's own indorsement on the check (if any) should avoid the location reserved for the depository bank. The actual depository bank remains responsible for the availability and other requirements of §subpart B, but the bank indorsing as depository bank is considered the depository bank for purposes of §subpart C (e.g., for purposes of determining the right to assert a claim under § 229.33(a) for failure to return a check expeditiously and accepting paper checks under § 229.33(c). The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depository bank.

2. Because the depository bank for §subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of



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nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of ~~§~~subpart C under § 229.37.

XXII. Section 229.36 Presentment and Issuance of Checks

~~A. 229.36(a) Payable Through and Payable at Checks- Receipt of Electronic Checks~~

~~1. For purposes of Subpart C, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of §229.30(a) and the notice of nonpayment requirements of §229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.~~

1. A paying bank may agree to accept presentment of electronic checks. (See § 229.2(ggg) and commentary thereto). The paying bank's acceptance of such electronic checks is governed by the paying bank's agreement with the bank sending the electronic check to the paying bank. The terms of these agreements are determined by the parties and may include, for example, the electronic address or electronic receipt point at which the paying bank agrees to accept electronic checks, as well as when presentment occurs. The agreement also may specify whether electronic checks sent for forward collection must be separated from electronic returned checks.

~~B. 229.36(b) Receipt at Bank Office or Processing Center of Paper Checks~~

~~1. This paragraph seeks to facilitate efficient presentment of checks to promote early return or notice of nonpayment to the depositary bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from §229.32(a) because presentment of checks differs from delivery of returned checks.~~

21. The paragraph specifies four locations at which the paying bank must accept presentment of paper checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of paper checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. ~~This is the way most checks are presented by banks today.~~ This provision adopts the common law rule ~~of a number of legal decisions~~ that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for

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processing of the check. (See also U.C.C. 4-204(c).) If a bank designates different locations for the presentment of forward collection paper checks bearing different routing numbers, for purposes of this paragraph it requests presentment of paper checks bearing a particular routing number only at the location designated for receipt of forward collection paper checks bearing that routing number.

b. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the paper check may be delivered to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment of paper checks. The designation of an address on the check generally is in the control of the paying bank.

b.c.

i. Delivery of a paper check may be made at an office of the bank associated with the routing number on the check. In the case of a substitute check, delivery may be made at an office of the bank associated with the routing number in the electronic check from which it was derived. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers*, published by an agent of the American Bankers Association, which lists a city and state address for each routing number. Paper Cchecks generally are handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink- contained in the MICR line (or on the basis of the fractional form routing number if the magnetic ink characters are MICR line is obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As † In these cases, † the payor bank has selected the payable-through bank as the point through which presentment is to be made. , it is proper to treat the payable-through bank as the paying bank for purposes of this section.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable



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or efficient to require the presenting bank to sort ~~the paper~~ checks by more specific branch addresses that might be printed on the checks, and to deliver ~~the paper~~ checks to each branch. A collecting bank normally would deliver all ~~paper~~ checks to one location. In cases where ~~paper~~ checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

~~ed.~~ If the ~~paper~~ check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3-111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. ~~Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.~~

~~d.~~ If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

~~32.~~ This paragraph may affect U.C.C. 3-111 to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

~~C. [Reserved]~~

~~DC. 229.36(dc) Liability of Bank During Forward Collection~~

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. 4-201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depository bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. 4-215(a)(2) or (3), because a paying bank has the right to recover

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settlement from a returning bank or depository bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4-202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in § 229.2(cc).)

E. 229.36(e) Issuance of Payable Through Checks

~~1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend “payable through” followed by the name of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check-processing region. (This section does not affect §229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.~~

~~2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depository bank or others as provided in §229.38. For example, a bank by which a payable-through check is payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under §229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as “payable through” a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank’s offices within the United States are considered part of the same bank; see §229.2(e).) In this example, the bank by which the checks are payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under Subpart B, due to the mislabeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.~~

FD. 229.36(fd) Same-Day Settlement

1. This paragraph governs settlement for presentment of paper checks. Settlement for presentment of electronic checks is governed by the agreement of the parties. (See § 229.36(a) and commentary thereto). This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a paper check on the same day the paper check is presented in order to avail itself of the ability to return the check on its next banking day under U.C.C. 4-301 and 4-302. This paragraph does not apply to paper checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the U.C.C. This paragraph

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does not supersede or limit the rules governing collection and return of paper checks through Federal Reserve Banks that are contained in §subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements.

a. Location and time.

i. For presented paper checks to qualify for mandatory same-day settlement, information accompanying the paper checks must indicate that presentment is being made under this paragraph—e.g. “these checks are being presented for same-day settlement”—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the paper check or checks must be presented at a location designated by the paying bank for receipt of paper checks for same-day settlement by 8:00 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a paper check under §_229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of §_229.36(fd), the paying bank agrees to accept paper checks at that location for the purposes of §_229.36(b).

~~ii. The designated presentment location also must be within the check processing region consistent with the nine-digit routing number encoded in magnetic ink on the check. A paying bank that uses more than one routing number associated with a single check processing region may designate, for purposes of this paragraph, one or more locations in that check processing region at which checks will be accepted, but the paying bank must accept any checks with a routing number associated with that check processing region at each designated location. A paying bank may designate a presentment location for traveler's checks with an 8000-series routing number anywhere in the country because these traveler's checks are not associated with any check processing region. The paying bank, however, must accept at that presentment location any other checks for which it is paying bank that have a routing number consistent with the check processing region of that location.~~

iii. If the paying bank does not designate a presentment location, it must accept presentment of paper check for same-day settlement at any location identified in §_229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that paper checks will be accepted for

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same-day settlement at an alternative location ~~(e.g., at an intercept processor located in a different check processing region)~~ or that the cut-off time for same-day settlement be earlier or later than 8:00 a.m. local time of the presentment location.

~~iviii~~. In the case of a paper check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the paper check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the paper check is sent for payment or collection.

b. Reasonable delivery requirements. A paper check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph ~~(fd)~~(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the paper checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the paper checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the paper checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that paper checks presented to it for same-day settlement be sorted separately from other forward collection paper checks it receives as a collecting bank or returned paper checks it receives as a returning or depository bank. For example, if a bank provides correspondent check collection services and receives unsorted paper checks from a respondent bank that include paper checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph ~~(f)(2) (d)(3)~~. If the collecting bank receives sorted paper checks from its respondent bank, consisting only of paper checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those paper checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a paper check in accordance with the time and location requirements for presentment under paragraph ~~(fd)~~(1), the paying bank either must settle for the paper check on the business day it receives the paper check without charging a presentment fee or return the paper check prior to the time for settlement. (This return deadline is subject to extension under § 229.301~~(ge)~~.) The settlement must

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be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer)-, ~~unless T~~the presenting bank ~~may~~ agrees with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the paper check is received by the paying bank. Under the provisions of § 229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also §229.39(d)-).

b. ~~CPaper~~ checks that are presented after the 8 a.m. (local time of the location at which the paper checks are presented) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such paper checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the paper checks are presented to the paying bank. ~~CPaper~~ checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for paper checks presented on these days (e.g., by opening their back office operations ~~or by using an intercept processor~~). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed.

If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph (fd)(1), the paying bank is accountable for the paper checks unless it settles for or returns the paper checks by the close of Fedwire on its next banking day. In addition, paper checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the U.C.C. midnight deadline (U.C.C. 4-301 and 4-302) and this regulation's expeditious return and notice of nonpayment provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in § 229.2(oo), to the presenting bank for the value of the float associated with the paper check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under § 229.38(e) or U.C.C. 4-109(b).



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5. Good faith. Under § 229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in §229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting paper checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of paper checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C. and may affect other sections or provisions:

a. Section 4-204(b)(1), in that a presenting bank may not send a paper check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (f)(1).

b. Section 4-213(a), in that the medium of settlement for paper checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4-301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a paper check is received is superseded by the requirement to settle for paper checks presented under this paragraph by the close of Fedwire.

d. Section 4-302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a paper check is received is superseded by the requirement to settle for paper checks presented under this paragraph by the close of Fedwire.

XXIII. Section 229.37 Variations by Agreement

A. This section is similar to U.C.C. 4-103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. 4-103(a) (which in turn follows U.C.C. 1-201(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to ~~section-UCC~~ 4-103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the

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agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement.

B. The Board has not followed U.C.C. 4-103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the U.C.C.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

1. A depositary bank may authorize another bank to apply the other bank's indorsement to a check as the depositary bank. (See § 229.35(d).)
2. A depositary bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (See § 229.332(ca).)
3. A depositary bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depositary bank's customer or prior indorser in the area of the depositary bank indorsement. (See § 229.38(d).)
4. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depositary bank. (See § 229.38(d).)
5. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (See § 229.35(a).)
6. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)
- ~~7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check processing region consistent with the routing number on the checks. (See § 229.36(f)(1)(i).)~~
- 87.** A presenting bank may agree with a paying bank to present paper checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (See § 229.36(fd)(1)(ii).)
- 98.** A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. (See § 229.36(b).)

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~~409.~~ A depository bank may agree with a paying or returning bank to accept an image or other notice in lieu of a returned check even when the check is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, a depository banks entering into such an agreement may be responsible under this part or other applicable law to other interested parties for any losses caused by the handling of a returned check under the agreement acceptance of an image or notice in lieu of a returned check. (See §§ ~~229.30(f)~~, 229.31(f), 229.38(a).)

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

XXIV. Section 229.38 Liability

A. 229.38(a) Standard of care; liability; measure of damages

1. The standard of care established by this section applies to any bank covered by the requirements of ~~Subpart C~~ of the regulation. Thus, the standard of care applies to a paying bank under §§ ~~229.301 and 229.33~~, to a returning bank under § ~~229.342~~, to a depository bank under §§ ~~229.32 and 229.33~~, to a bank erroneously receiving a returned check or written notice of nonpayment as depository bank under § ~~229.323~~ (ef), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. 1-203 and 4-103(a) and includes a duty to act in good faith, as defined in § 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depository bank, the depository bank's customer, the owner of the check, or another party to the check. The depository bank's customer is usually a depositor of a check in the depository bank (but see § 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on U.C.C. 4-103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4-202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. 4-201.

3. Under this measure of damages, a depository bank or other person must show that the damage incurred results from the negligence proved. For example, the depository bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux v. Van Wyk*, 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp. v. Prospect Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depository bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.



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4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under U.C.C. 4-402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B. 229.38(b) Paying Bank's Failure ~~To Make Timely Rreturn~~Return

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.301(eg)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's accountability for missing its midnight or other deadline under the U.C.C., (e.g., sections 4-215 and 4-302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

C. 229.38(c) Comparative Negligence

1. This paragraph establishes a “pure” comparative negligence standard for liability under ~~§~~subpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depository bank, where the depository bank has failed to exercise ordinary care in applying its indorsement. ~~Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depository bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§229.30(a) or 229.31(a).~~

~~2. Examples.~~

~~a. If a depository bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depository bank or find its routing number, the paying or returning bank's liability to the depository bank would be reduced or eliminated.~~

~~b. If the depository bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank or find its routing number, the paying or returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depository bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.~~



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~~c. If a depository bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depository bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depository bank, the returning bank may not be liable to the depository bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depository bank to the extent that the printing, carbon band, or other material caused the delay.~~

D. 229.38(d) Responsibility for Certain Aspects of Checks

~~1. Responsibility for back of check. The indorsement standard in §229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank, depository bank, or reconverting bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.~~

21. ANS X9.100-140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depository bank indorsement, applied to an original paper check likely will change when the first reconverting bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with [appendix D's ANS X9.100-111's](#) location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with the appendix's requirements, then the reconverting bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with [appendix D-ANS X9.100-111](#) is rendered illegible by a subsequent indorsement that later is applied to the substitute check in accordance with [appendix D-ANS X9.100-140](#), or because the subsequent bank cannot apply its indorsement to the substitute check legibly in accordance with [appendix D-ANS X9.100-111](#) as a result of the shift in the previous indorsement.

2. Responsibility under paragraph (d)(1) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph (d)(1) is treated in the same way as the degree of negligence under paragraph (c) of this section.

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XXV. Section 229.39 Insolvency of Bank



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A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return and are derived from U.C.C. 4-216. Paragraphs (a), (b), and (d) of § 229.39 are derived from UCC 4-216. They are intended to apply to all banks. Like UCC 4-216, paragraphs (a), (b), and (d) of § 229.39 are intended to establish the point in the collection process at which collection or return of a check should be either stopped or continued when a particular bank suspends payments. Section 229.39(a) sets forth the circumstances under which the receiver must stop collection or return and, instead, send the check back to the bank or customer that transferred the check. Section 229.39(b) sets forth the circumstances under which the collection or return of the check should continue. Paragraphs (a) and (b) of § 229.39 are not intended to confer upon banks preferential positions in the event of bank failures over general depositors or any other creditor of the failed bank. (See UCC 4-216, cmt. 1).

B. 229.39(a) Duty of Receiver to Return Unpaid Checks

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it the paying bank or the receiver does- did not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Preference Against Paying or Depository Bank Claims Against Banks for Checks Not Returned by the Receiver

1. This section sets forth the claims available to banks in situations in which a receiver does not return a check under § 229.39(a). In those situations, the prior bank would not be a holder of the check and would be unable to pursue claims as a holder.

12. This paragraph-Paragraph (b)(1) of § 229.39 gives a bank a ~~preferred~~ claim against a closed paying bank that finally pays a check without settling for it or a closed depository bank that becomes obligated to pay a returned check without settling for it. If the bank with a ~~preferred~~ claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

D. 229.39(c) Preference Against Paying, Collecting, or Depository Bank

13. This paragraph-Paragraph (b)(2) of § 229.39 gives a bank a ~~preferred~~ claim against a closed collecting ~~bank~~, paying ~~bank~~, or returning bank that receives settlement but does not make settlement for a check. (See ~~C~~ommentary to § 229.35(b) for discussion of prior and subsequent banks-). As in the case of § 229.39(b)(1), if the bank with a ~~preferred~~ claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the ~~preferred~~ claim.

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~~ED. 229.39(dc) Preference-Preferred Claim Against Presenting Bank for Breach of Warranty~~

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

~~FE. 229.39(ed) Finality of Settlement~~

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

XXVI. Section 229.40 Effect on Merger Transaction

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in § 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

~~1. The paying bank's responsibility for expeditious return (§229.30).~~

~~2. The returning bank's responsibility for expeditious return (§229.31).~~

~~3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depository bank that has merged with the returning bank (§229.31(a)).~~

~~1. The paying bank's responsibility for notice of nonpayment (§ 229.31(c)).~~

~~42. Where the depository bank must accept returned checks (§ 229.332(ba) and (c)).~~

~~53. Where the depository bank must accept notice of nonpayment (§ 229.33(b) and (c)).~~

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64. Where a paying bank must accept presentment of checks (§ 229.36(b)).

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XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

A. 229.43(a) Definitions

1. For purposes of subparts B and C of this part, Bbank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in § 229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), or an electronic image and electronic information derived from a demand draft as defined in § 229.43(a)(2), the bank is subject to certain provisions of Regulation CC, as provided in this section. Because the Pacific island bank is not a bank as defined in § 229.2(e) for purposes of subpart C, it is not a paying bank as defined in § 229.2(z) (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC subparts B and C, but may be subject to the provisions of subpart D of this part to the extent they create substitute checks (See § 229.2(ff) defining "State").

2. A bank may agree to handle a Pacific island check as a returned check under § 229.312 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of § 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC for purposes of subpart C of this part, § 229.312(~~ee~~) does not apply to a returning bank settling with the Pacific island bank.

3. A depository bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank generally is subject to the provisions of § 229.323, including the provisions regarding time and manner of settlement for returned checks in § 229.32(b), in the event the Pacific island check is returned by a returning bank, except for § 229.33(c) with respect to its application to paper notice of nonpayment, § 229.33(d) (acceptance of oral notices of nonpayment), and § 229.33(h) (notification to customer of returned check). If the depository bank receives the returned Pacific island



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check directly from the Pacific island bank, ~~however,~~ the provisions of § 229.323~~(be)~~ do not apply, because the Pacific island bank is not a paying bank ~~under Regulation CC for purposes of subpart C of this part.~~ In the event the Pacific island check is returned by a returning bank, however, the provisions of § 229.33(e) apply. The depository bank is not subject to the ~~notice of nonpayment~~ provisions in § 229.33(c) with respect to paper notices of nonpayment for Pacific island checks, but is subject to § 229.33(c) with respect to paper returned checks that are Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement “pay any bank.” For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the returned check warranties in § 229.34~~(ad)~~. Similarly, because the Pacific island bank is not a “bank” or a “paying bank” ~~under Regulation CC for purposes of subpart C of this part,~~ the notice of nonpayment warranties in § 229.34~~(be)~~, and the presentment warranties in § 229.34~~(c)(1), and (c)(4)~~, and (c)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36~~(dc)~~, regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. §229.51 General provisions governing substitute checks

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B. 229.51(b) Reconverting Bank Duties

1. ~~As discussed in more detail in appendix D and the commentary to §229.35 In accordance with ANS X9.100-140,~~ a reconverting bank must indorse (or, if it is a paying bank with respect to the check or a bank that rejected a check submitted for deposit, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check that a substitute check must contain. ~~Indorsements applied physically to the original check after an image of the original check was captured would be~~



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~~conveyed as electronic indorsements~~ If a bank sprays an indorsement onto a paper check after it captures an image of the check, it should ensure that it applies an indorsement to the item electronically, if it transfers the check as an electronic check or electronic returned check (see paragraph 3-4 of the commentary to § section 229.35(a)). If indorsements were applied electronically after an image of the original check was captured or were applied electronically after a previous substitute check was converted to electronic form, the reconverting bank must apply those indorsements physically to the substitute check. A reconverting bank satisfies its obligation to preserve all previously applied indorsements by physically applying (overlying) electronic indorsements onto a substitute check that the reconverting bank creates. A reconverting bank is not responsible for obtaining indorsements that persons that previously handled the check should have applied but did not apply.

~~2. A reconverting bank also must identify itself as such on the front and back of the substitute check and must preserve on the back of the substitute check the identifications of any previous reconverting banks in accordance with appendix D. The presence on the back of a substitute check of indorsements that were applied by previous reconverting banks and identified with asterisks in accordance with appendix D would satisfy the requirement that the reconverting bank preserve the identification of previous reconverting banks. As discussed in more detail in the commentary to §229.35, the reconverting bank and truncating bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank, the reconverting bank's routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.~~

2. A reconverting bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of a substitute check in accordance with ANS X9.100-140.

~~3. The reconverting bank must place the routing number of the truncating bank surrounded by brackets on the front of the substitute check in accordance with appendix D and ANS X9.100-140.~~

3. If the reconverting bank is the paying bank or a bank that rejected a check submitted for deposit, it also must identify itself by applying its routing number to the back of the check. A reconverting bank also must preserve on the back of the substitute check, in accordance with ANS X9.100-140, the identifications of any previous reconverting banks. The reconverting-bank and truncating-bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank or a bank that rejected a check submitted for deposit, the reconverting bank's routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.

Example.

A bank's customer, which is a nonbank business, receives checks for payment and by agreement deposits substitute checks instead of the original checks with its depository



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bank. The depository bank is the reconverting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with ~~appendix D and with~~ ANS X9.100-140, the bank must therefore be identified on the front of the substitute checks as a reconverting bank and as the truncating bank, and on the back of the substitute checks as the depository bank and a reconverting bank.

4. The location of an indorsement applied to a paper check in accordance with ANS X9.100-111 may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied to an original check in accordance with ANS X9.100-111 is overwritten by a subsequent indorsement applied to a substitute check in accordance with industry standards, then one or both of those indorsements could be rendered illegible. As explained in § 229.38(c) and the commentary thereto, a reconverting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution.

* * * * *

XXXI. §229.52 Substitute Check Warranties

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute check warranties begins with the reconverting bank. In the case of a substitute check created by a bank, the reconverting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration or when it rejects a check submitted for deposit and returns to its customer a substitute check. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check it received or an electronic or paper representation of that substitute check.

2. To ensure that warranty protections flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute-check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

23. The substitute-check warranties and indemnity are not given under §§ sections 229.52 and 229.53 by a bank that truncates the original check and by agreement transfers the original check electronically an electronic check to a subsequent bank for consideration. However, ~~parties may, by agreement, allocate liabilities associated with the exchange of electronic check information.~~ the warranties in § 229.34(a) would apply to the transfer of an electronic check, and those warranties may be varied by agreement between the parties. A bank that is a truncating bank under § 229.2(eee)(2) because it accepts a deposit of a

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check electronically might be subject to a claim by another depository bank that accepts the original check for deposit. (See § 229.34(f) and commentary thereto).

Example.

A bank that receives an electronic check information electronically and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor with respect to the substitute check warranties. ~~However, that bank may protect itself by including in its agreement with the sending bank provisions that specify the sending bank's warranties and responsibilities to the receiving bank, particularly with respect to the accuracy of the check image and check data transmitted under the agreement. That bank, however, may have similar warranty claims with respect to the electronic check under § 229.34(a) against the bank that transferred the electronic check.~~

34. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all ~~U-C-C-~~ and other Regulation CC warranties that apply to the original check also apply to the substitute check.

45. The legal~~-~~equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute~~-~~check form and then back again, such that there would be multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under § section 229.52 if the legal~~-~~equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

56. The warranty in § section 229.52(a)(21)(ii), which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check, an electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or



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some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge. (See also § 229.34(a)(1)(ii)).

Example.

A nonbank depositor truncates a check and in lieu ~~thereof of the check~~ sends an electronic ~~version of that~~ check to both Bank A and Bank B. Bank A and Bank B each uses the check information that it received electronically to create a substitute check, which it presents to Bank C for payment. Bank A and Bank B are both reconverting banks and each is a reconverting bank that made the substitute check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim for the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

7. A bank that rejects a check submitted for deposit and, instead of the original check, provides its customer with a substitute check makes the warranties in § 229.52(a)(1). As noted in the commentary to § 229.2(ccc), the Check 21 Act contemplates that nonbank persons that receive substitute checks (or representations thereof) from a bank will receive warranties and indemnities with respect to the checks. A reconverting bank that provides a substitute check to its depositor after it has rejected the check submitted for deposit may not have received consideration for the substitute check. In order to prevent banks from being able to transfer a check the bank truncated and then reconverted without providing substitute check warranties, the regulation provides that a bank that rejects a check submitted for deposit but provides its customer with a substitute check (or a paper or electronic representation of a substitute check) makes the warranties set forth in § 229.52(a)(1) regardless of whether the bank received consideration.

Example. A bank's customer submits a check for deposit at an ATM that captures an image of the check and sends the image electronically to the bank. After reviewing the item, the bank rejects the item submitted for deposit. Instead of providing the original check to its customer, the bank provides a substitute check to its customer. This bank is the reconverting bank with respect to the substitute check and makes the warranties described in § 229.52(a)(1) regardless of whether the bank previously extended credit to its customer. (See commentary to § 229.2(ccc)).

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns the substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the depository bank, the drawer, the drawee, the payee, the depositor, and



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any indorser. The paying bank would be included as a warranty recipient, for example because it would be the drawee of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute check to persons that receive a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check. (See § 229.34(f) regarding claims by a depository bank that accepts deposit of an original check).

3. A reconverting bank also makes the warranties to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank received consideration.

XXXII. §229.53 Substitute Check Indemnity

A. 229.53(a) Scope of Indemnity

1. Each bank that for consideration transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check is responsible for providing the substitute check indemnity.

2. The indemnity covers losses due to any subsequent recipient's receipt of the substitute check instead of the original check. The indemnity therefore covers the loss caused by receipt of the substitute check as well as the loss that a bank incurs because it pays an indemnity to another person. A bank that pays an indemnity would in turn have an indemnity claim regardless of whether it received the substitute check or a paper or electronic representation of the substitute check. The indemnity would not apply to a person that handled only the original check or a paper or electronic version of the original check that was not derived from a substitute check.

3. A reconverting bank also provides the substitute check indemnity to a person to whom the bank transfers a substitute check (or a paper or electronic representation of a substitute check) derived from a check that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.

Examples.

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B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute-check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples.

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently-presented checks that it otherwise would have paid and charged the drawer returned-check fees. The payees of the returned checks also charged the drawer returned-check fees. The drawer would have a warranty claim against any of the warranting banks, including its bank, for breach of the warranty described in § 229.52(a)(~~21~~)(ii). The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its warranty and indemnity claims against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned-check fees charged by both the paying bank and the payees of the returned checks. If the drawer's account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the erroneous returned-check fees. The drawer also could recover its expenditures for representation in connection with the claim. Finally, the drawer could recover any other losses that were proximately caused by the warranty breach.

b. In the example above, the paying bank that received the duplicate substitute checks also would have a warranty claim against the previous transferor(s) of those substitute checks and could seek an indemnity from that bank (or either of those banks). The indemnifying bank would be responsible for compensating the paying bank for all the losses proximately caused by the warranty breach, including representation expenses and other costs incurred by the paying bank in settling the drawer's claim.

* * * * *

3. The amount of an indemnity would be reduced in proportion to the amount of any amount loss attributable to the indemnified person's negligence or bad faith. This comparative negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of [§ section 229.38\(c\)](#).

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XXXIII. §229.54 Expedited Recredit for Consumers

A. 229.54(a) Circumstances Giving Rise to a Claim

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2. A consumer must in good faith assert that the bank improperly charged the consumer's account for the substitute check or that the consumer has a warranty claim for the substitute check (or both). The warranty in question could be a substitute check warranty described in [§ section 229.52](#) or any other warranty that a bank provides with respect to a check under other law. A consumer could, for example, have a warranty claim under [§ section 229.34\(b\)\(a\) or \(d\)](#), which contains returned-check warranties that are made to the owner of the check.

* * * * *